

**National Assembly for Wales**  
Communities, Equality and Local  
Government Committee

**Renting Homes (Wales) Bill:  
Stage 1 Committee Report**

June 2015

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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# Communities, Equality and Local Government Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

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## Current Committee membership:



**Christine Chapman (Chair)**

Welsh Labour  
Cynon Valley



**Peter Black**

Welsh Liberal Democrats  
South Wales West



**Alun Davies**

Welsh Labour  
Blaenau Gwent



**Jocelyn Davies**

Plaid Cymru  
South Wales East



**Janet Finch-Saunders**

Welsh Conservatives  
Aberconwy



**Mike Hedges**

Welsh Labour  
Swansea East



**Mark Isherwood**

Welsh Conservatives  
North Wales



**Gwyn Price**

Welsh Labour  
Islwyn



**Gwenda Thomas**

Welsh Labour  
Neath



**Rhodri Glyn Thomas**

Plaid Cymru  
Carmarthen East and Dinefwr

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The following Member attended as a substitute member of the Committee during this inquiry.



**John Griffiths**

Welsh Labour  
Newport East

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## The Committee's recommendations

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The Committee's recommendations to the Member in charge are listed below, in the order that they appear in this report. Please refer to the relevant page of the report to see the supporting evidence and conclusions.

**Recommendation 1.** We recommend that the Assembly agrees the general principles of the Bill. (Page 14)

**Recommendation 2.** We recommend that the Minister publishes a list of all amendments and repeals to be made to existing legislation as a consequence of the Bill, and that she does so before the Committee completes its consideration of the Bill. (Page 15)

**Recommendation 3.** We recommend that the Minister revisits her estimate of costs for training and awareness raising about the provisions of the Bill. (Page 15)

**Recommendation 4.** We recommend that the Minister amends the Bill to set out more clearly the criteria for judging whether the modification or removal of a fundamental term has "improved the position" of the contract-holder. We believe this should be in the "reasonable view" of the individual contract-holder concerned, rather than on the basis of contract-holders in general. (Page 21)

**Recommendation 5.** We recommend that the Minister amends the Bill to provide for regulations relating to fundamental and supplementary terms to be subject to the affirmative procedure in all cases. (Page 22)

**Recommendation 6.** We recommend that the Welsh Government's model contract should be used as the basis for a default contract where a landlord has failed to provide a written statement. (Page 25)

**Recommendation 7.** We recommend that the Minister consults further with stakeholders before finalising the model contracts, and that such consultation should be undertaken directly with contract-holders, as well as representative bodies. (Page 28)

**Recommendation 8.** We recommend that the Minister amends the Bill so that the issuing of occupation contracts is digital by default. (Page 28)

**Recommendation 9.** We recommend that the Minister amends the Bill so that regulations made under section 29(1) relating to model written

statements of contract must be subject to the affirmative procedure. (Page 28)

**Recommendation 10.** We recommend that the Minister considers including specific details and guidance about joint contracts to prospective contract-holders as part of a contract-holder education and awareness scheme. (Page 33)

**Recommendation 11.** We recommend that the Minister amends the Bill to prevent a landlord from recovering possession on the ‘no-fault’ ground during the first six months of a standard contract. (Page 39)

**Recommendation 12.** We recommend that the Minister amends the Bill to widen the definition of retaliatory eviction beyond disrepair and fitness for human habitation. (Page 44)

**Recommendation 13.** We recommend that the Minister amends the Bill to include a rebuttable presumption that an eviction is retaliatory in cases where it occurs after a contract-holder has registered a complaint with the landlord about the condition of the property. (Page 44)

**Recommendation 14.** We recommend that the Minister amends the Bill to make provision for a minimum period of 12 months before a rent varying notice can be served on the first occasion. (Page 47)

**Recommendation 15.** We recommend that the frequency of rent increases after the first increase be restricted to no more than once every 12 months. (Page 47)

**Recommendation 16.** We recommend that the Minister amends the Bill to remove the temporary exclusion provisions within supported standard contracts. (Page 54)

**Recommendation 17.** If the provision for temporary exclusions is not removed from the Bill, we recommend that the Minister amends the Bill to provide for an independent review of decisions to exclude persons in supported accommodation from their property for 48 hours, and that such reviews should be able to take place within the exclusion period. (Page 54)

**Recommendation 18.** Further, and if the provision for temporary exclusions is not removed, we recommend that the Minister makes arrangements for any decision to temporarily exclude a person in supported accommodation from their home to be taken at a senior level. (Page 54)



**Recommendation 19.** We recommend the Minister amends the Bill so as to restrict its provisions relating to 16 and 17 year olds to occupation contracts issued by community landlords. (Page 67)

**Recommendation 20.** We recommend that the Minister amends the Bill so that the provision of guidance and support is a statutory requirement of all landlords when offering contracts to 16 and 17 year olds. (Page 67)

**Recommendation 21.** We recommend that the Minister gives further consideration to sections 208 and 209 relating to possession claims made on the ground of contract-holder's notice, in the light of the evidence from the Housing Law Practitioners Association. (Page 72)

**Recommendation 22.** We recommend that the Minister gives further consideration to estate management grounds for possession, in the light of the evidence we have received. (Page 73)

**Recommendation 23.** We draw the Minister's attention to the evidence from Shelter Cymru relating to section 152, termination by agreement, and the lack of requirement for a termination agreement to be in writing. We recommend that she gives further consideration to this section in light of the evidence. (Page 73)

**Recommendation 24.** We draw the Minister's attention to the evidence from Shelter Cymru relating to section 214 (reviewing a claim). We recommend that she gives further consideration to this section in light of the evidence. (Page 74)

**Recommendation 25.** We recommend that the Minister considers amending section 55 of the Bill to ensure that it applies to the partner of a contract-holder, where that contract-holder is a perpetrator of domestic abuse and the partner does not live in the dwelling or in the locality of the dwelling. (Page 80)

**Recommendation 26.** We recommend that the Minister reconsiders the criteria to be used for the "fitness for human habitation" test for the purpose of setting a more ambitious test. Such criteria could be based on the Repairing Standard provisions contained in the Housing (Scotland) Act 2006. (Page 84)

**Recommendation 27.** We recommend that the Minister reconsiders the use of the term "fitness for human habitation" and amends the Bill accordingly. (Page 84)

**Recommendation 28.** We recommend the Minister amends the Bill so as to require Welsh Ministers to make regulations for the purpose of determining whether a dwelling is fit for habitation. (Page 84)

**Recommendation 29.** We recommend that these regulations are subject to the affirmative procedure. (Page 84)

**Recommendation 30.** We agree with respondents that the Bill should make provision for the installation of carbon monoxide detectors and smoke alarms, and the periodic inspection of electrical installations to be mandatory in rental properties. We recommend that the Minister amends the Bill accordingly. (Page 85)

**Recommendation 31.** We recommend that the Minister makes provision for penalties to be issued against landlords who are in breach of contract, with serious or repeated breaches leading to revocation of the landlord's licence under the Housing (Wales) Act 2014. (Page 88)

**Recommendation 32.** Further, we recommend that the Minister makes appropriate provision for clear timescales within which landlords must carry out repairs. (Page 89)

**Recommendation 33.** We recommend that the Minister amends the Bill to make provision that failure by a landlord to follow the correct abandonment procedure should constitute an unlawful eviction. (Page 95)

**Recommendation 34.** We recommend that the Minister issues guidance to landlords on the use of the abandonment procedure. (Page 95)

**Recommendation 35.** We recommend that the Minister amends the Bill so that landlords can only seek possession for abandonment where the serious rent arrears ground for possession, under sections 179(2) and 184(2), has been made out. (Page 95)

**Recommendation 36.** We recommend that the Minister amends the Bill to make provision for adjudication over disputes in relation to rent increases, fitness for human habitation issues, succession rights, failure to supply a contract and alternative dispute resolution/mediation services. We believe the most effective way of doing this would be to expand the current role of the RPT Wales. (Page 100)

**Recommendation 37.** We recommend that the Minister reviews the financial estimates for the Bill in light of the Finance Committee's concerns and the evidence we have received on this matter, and updates the Explanatory Memorandum following stage 2 proceedings to take account of this review. (Page 105)

# 1. Introduction

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1. On 9 February 2015, the Minister for Communities and Tackling Poverty, Lesley Griffiths AM ('the Minister'), introduced the [Renting Homes \(Wales\) Bill](#) ('the Bill') and accompanying [Explanatory Memorandum](#). The Minister made a [statement](#) in plenary the following day.
2. At its meeting on 23 January 2015, the Assembly's Business Committee agreed to refer the Bill to the Communities, Equality and Local Government Committee ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 26 June 2015.

## Terms of scrutiny

3. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

- i. the general principles of the Renting Homes (Wales) Bill and the need for legislation to improve the arrangements for renting a home in Wales;
- ii. any potential barriers to the implementation of these provisions and whether the Bill takes account of them;
- iii. whether there are any unintended consequences arising from the Bill;
- iv. the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);
- v. the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

## The Committee's approach

4. Between 12 February and 27 March 2015, the Committee conducted a public consultation to inform its work, based on the agreed terms of reference. [44 responses](#) were received and published on the Assembly's website. In addition, the Committee heard oral evidence from a number of witnesses. The schedule of oral evidence sessions is published on the Assembly's website.

5. The Committee would like to thank all those who have contributed to its work. The Committee is also grateful to its expert adviser, David Smith, for his advice and guidance during its consideration of this complex subject area.

## 2. General principles and the need for legislation

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### *Background*

6. Around a third of the population of Wales live in rented accommodation. The changes proposed by the Renting Homes (Wales) Bill will affect almost all of those people and their landlords.

7. The Bill will replace the majority of existing types of tenancy and licence agreements with two new types of occupation contract. The Law Commission first proposed this in 2006 when it published [Renting Homes: The Final Report](#) and a [draft Bill](#). The UK Government chose not to take forward the recommendations or the draft Bill.

8. In 2013, at the request of the Welsh Government, the Law Commission updated its original report. [Renting Homes in Wales](#) focused on implementing the original proposals in Wales. It also updated them in light of further devolution.

9. This Bill is the second significant piece of housing legislation to come before the Fourth Assembly, following the *Housing (Wales) Act 2014*.

### **The Bill**

10. In her statement to accompany the Bill, the Minister outlined some of her reasons for introducing the Bill:

“The law applying to renting has become complicated for two reasons. Firstly, there are many separate pieces of legislation applying to renting and secondly, there is also a large amount of common law, some of which dates back to feudal times.”

11. The Minister went on to outline what she considered to be some of the main problems with the current system, including the different rights enjoyed by council and housing association tenants, issues surrounding joint tenancies, succession rights and the inability of 16 and 17 year olds to hold a tenancy.

12. As well as reforming, consolidating and updating the law in this area, the Minister said that the Bill seeks to make the law clearer and more consistent, so that landlords and contract-holders are clear about their rights and responsibilities.

13. We asked the Minister to clarify how she intends the Bill to interact with the common law. Responding to this, she told us:

“In line with the Law Commission’s recommendations, the Bill incorporates certain aspects of common law which would benefit from being set out in statute, for example, Chapter 13 of the Bill which deals with abandonment.

“The particular benefit of this approach is to achieve greater clarity by including such matters as terms within an occupation contract. Schedule 9 on structured discretion, which sets out circumstances to be taken into account by the court in reaching a decision on possession claims and other matters, is also intended to shape the development of the common law.”<sup>1</sup>

14. The Minister’s senior lawyer clarified that although the Bill will introduce occupation contracts, they will “sit on top” of tenancies and licences which will continue to exist. However, he did not see this affecting the common law.

15. We asked the Minister for information about the repeals and amendments proposed for the Bill. She told us she “would hesitate” to give a list of amendments, arguing that making provision for consequential amendments “is a matter of Bill implementation”. She said that the intention was to make the necessary provision by Order, which would be subject to the affirmative resolution procedure. She also said “there may only be limited repeals” as a considerable amount of legislation relating to dwellings in Wales will continue to apply.<sup>2</sup>

16. Further, and with specific reference to repeals relating to the Protection from Eviction Act 1977, the Minister said:

“The Protection from Eviction Act 1977 is not to be repealed. Doing so would assume all licences and tenancies in future would be occupation contracts. Whilst the vast majority will be subject to the Bill (...) not all will. There will be certain elements of the 1977 Act which will need to be preserved in any event and others will need to be amended in consequence of the Bill.”<sup>3</sup>

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<sup>1</sup> Letter from the Minister for Communities and Tackling Poverty, 16 April 2015

<sup>2</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

<sup>3</sup> *ibid.*

## ***Evidence from respondents***

17. There was general, though not unanimous, support for the main policy objectives of the Bill. The Residential Landlords Association (RLA) described the Bill as “well intentioned”; this was typical of the views we received.

18. A number of respondents, however, argued that the current system worked well and could be made to work better. We also heard that the Bill did nothing to address the main issue affecting the housing sector, which was increasing supply to provide contract-holders with more choice.

19. The objective of simplifying, clarifying and modernising the current law was generally welcomed. The Housing Law Practitioners Association (HLPAs) stated:

“(…) the law under which someone holds their home should be straightforward, accessible and designed so that landlords and tenants can understand it without the need to engage lawyers, whether on the landlord or the tenant side. And anything that leads to simplification is to be welcomed.”<sup>4</sup>

20. Not all respondents felt the Bill, as currently drafted, would necessarily achieve its objectives. Pontypool Park Estate stated:

“I am not clear that the Bill will create “a clearer, simpler and more straightforward legal framework”. The Bill will not bring all tenancy forms into one of two options, since it allows *inter alia* the continuation of Rent Act tenancies. (…)

“WAG is effectively bringing in the new legislation, with the massive cost, confusion and disruption it entails, in order to replace the Assured Shorthold with something which WAG claims is similar.”<sup>5</sup>

21. In contrast, Shelter Cymru said that the Bill was “long overdue”, whilst Llamau thought the changes would make the system more “transparent”. There was widespread support for making all parties more aware of their rights and responsibilities, but there were doubts about whether the Welsh Government’s financial commitment to this would be adequate.

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<sup>4</sup> Record of Proceedings (RoP), 20 May 2015, para 10

<sup>5</sup> Written evidence, RH35



22. A number of respondents called for clear links between this Bill and the Housing (Wales) Act 2014; in particular Parts 1 and 2 of the Act which deal with landlord/agent licensing and registration, and homelessness. As an example, Citizens Advice Cymru and Shelter Cymru suggested that breaches of occupation contracts by landlords should be recorded on their landlord licence. The RLA commented that “no thought has been given” on how the mandatory training that will be part of the licensing process for landlords and agents under the Housing (Wales) Act 2014 would reflect the changes in the Bill. It said that the Welsh Government should “explore ways of using the registration and licensing scheme to put across a message regarding the requirements of the Bill”.<sup>6</sup>

23. Many respondents drew attention to developments in England and elsewhere in the United Kingdom. Some viewed this Bill as an opportunity for Wales to develop its own solutions to housing problems. Others, including the RLA, argued that a legal framework for renting that was separate from England could create a number of potential pitfalls, such as a more challenging environment for landlords with property in both countries.

24. Many respondents welcomed the levelling of the playing field across social housing and, in particular, that the proposed changes would raise the level of all tenancies to that of secure tenancies, rather than down to assured tenancies.

25. Much of the evidence focused on the impact that the Bill would have on the private rented sector (PRS). There was some scepticism from landlords’ representatives as to what the Bill would achieve, and particular concerns about the potential for increasing bureaucracy and costs. From the third sector, there was also a suggestion that implementing the Bill would involve an “apparent erosion of tenants’ rights”.<sup>7</sup>

26. Whilst some respondents welcomed the provisions enabling individual terms of contracts to be negotiated, others saw this as something potentially open to exploitation, particularly in the case of vulnerable contract-holders. However, we also heard evidence that it is not unusual under the current system for landlords, agents and tenants to negotiate specific contractual terms.

27. We also heard that the Bill was a “missed opportunity”, and that it could have created a “fair deal for renters”, something that the Housing (Wales) Act

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<sup>6</sup> Written evidence, RH29

<sup>7</sup> Written evidence, RH18

2014 had not.<sup>8</sup> Further to this, Let Down in Wales emphasised the importance of the Code of Practice for Private Rented Sector Landlords and Agents (“the Code”) to be issued under Part 1 of the 2014 Act, and how that Act’s effectiveness would depend on how the Code works with the Bill. The Welsh Government has [consulted](#) on the draft Code, and the Minister has confirmed that the final Code will need to be amended to reflect the requirements of the Bill.<sup>9</sup>

28. Professor Martin Partington, a former Law Commissioner, echoed the views of a number of respondents, including the HLPAs, by highlighting the need for a “significant public education programme about the changes” so that the “advantages” of the reformed law could be made clear to people.<sup>10</sup> On this point, the HLPAs said:

“... the Association would urge that sufficient funds be earmarked for a substantial and sustained advertising campaign once the Bill becomes an Act and, again, ahead of the commencement date. This is a significant change in housing law in Wales – probably the most significant change since the Housing Act 1988 – and all parties (landlords, tenants, agents, lawyers) will need to be made aware of the fundamental nature of the changes.”<sup>11</sup>

29. The HLPAs also suggested further consultation with the Bar Council and the Law Society “to ensure that there is a properly marked out training course for lawyers” ahead of the implementation of the Bill.<sup>12</sup>

30. Some concerns were raised about the potential costs of implementing this legislation, and a number of respondents criticised the Regulatory Impact Assessment. The Council of Mortgage Lenders (CML) said it had concerns that the proposals could impact upon buy-to-let lending if significant new burdens were placed upon private landlords. The Country Land and Business Association Cymru (CLA Cymru) raised concerns about the potential negative impact on rural areas.

31. A number of the respondents commented on the timing of the changes, in the context of both welfare reform and commencement of the Housing (Wales) Act 2014, questioning whether this was the best time for such changes to be introduced. On this point, Community Housing Cymru (CHC)

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<sup>8</sup> Written evidence, RH05

<sup>9</sup> RoP, para 166, 20 May 2015

<sup>10</sup> Written evidence, RH07

<sup>11</sup> Written evidence, RH41

<sup>12</sup> RoP, para 15, 20 May 2015

said it was concerned that the changes in the Bill “are ill-timed and will create more anxiety for tenants who are already grappling with welfare reform changes”. It called on the Welsh Government to postpone implementation of these proposals until the roll-out of Universal Credit is completed.<sup>13</sup>

32. Finally, there were many requests, from across the sector, for guidance from the Welsh Government on various parts of this Bill should it become law. Many respondents seemed to be unclear about the provisions in the Bill, and what these would mean in practice.

### *Schedule of repeals*

33. The RLA told us that it was “disappointing” that the Bill does not contain a list of repeals or amendments to existing legislation.” In particular, it felt that the inter-relationship between the provisions of the Bill and the Protection from Eviction Act 1977 was important.<sup>14</sup>

34. The HLPAs also thought “it would be cleaner, from a legal policy perspective, for you to have repeals on the face” of the Bill, but suggested that such provision was “probably a benefit for lawyers rather than occupiers”.<sup>15</sup>

### *Our view*

35. We note that one of the main objectives of the Bill is the simplification of existing legislation. Whilst simplification in itself is not without merit, there seems to be very little else within the Bill that will deliver clear improvement for Welsh contract-holders in the social and private rented sectors. We believe that the Bill lacks ambition in a number of key areas, not least in relation to the quality of housing in the private rented sector. The Minister could have used the Bill as a vehicle to make more significant improvements for those involved in renting homes in Wales.

36. Furthermore, we are not convinced that the Bill will place Wales in a position whereby its rented housing sector has features which put it ahead of those in England and Scotland. Moreover, in some respects we have concerns that the Bill may put Wales in a less favourable position than other parts of the UK. We feel strongly that the Bill represents a missed opportunity to materially improve the position of contract-holders in Wales, particularly those in the PRS.

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<sup>13</sup> Written evidence, RH32

<sup>14</sup> Written evidence, RH29

<sup>15</sup> RoP, para 13, 20 May 2015

37. However, in terms of consolidating and modernising the existing raft of housing legislation, we can find little to object to.

**We recommend that the Assembly agrees the general principles of the Bill.**

38. Despite this, we have concerns about specific aspects of the Bill, which we outline below and in the following chapters.

39. In particular, we need further assurances from the Minister in relation to the occupation contract system proposed in the Bill effectively “sitting on top” of the existing system rather than replacing it. It seems to us that this proposal has the potential to create more confusion than it removes.

40. Evidence from the Minister indicates that a number of existing provisions in other legislation are to remain in force and we are concerned that the objective of simplicity will be seriously undermined if the Bill does not in fact contain all of a contract-holder’s rights and remedies in one concerted piece of legislation.

41. Our scrutiny of the Bill has highlighted the need for considerable read-across with the Housing (Wales) Act 2014, particularly in terms of Part 1 of that Act, which addresses landlord/agent registration and licensing and, to a lesser extent, Part 2 of the Act which deals with homelessness. We feel that specific provision for such read-across is missing from the Bill, to the extent that we have been able to review the Bill and associated repeals. We have questioned whether a better approach by the Welsh Government would have been to introduce one substantial consolidating Bill, which brought together this Bill and the provisions in the 2014 Act. In particular, we note the Minister’s evidence that the Code of Practice for Private Rented Sector Landlords and Agents, recently the subject of public consultation by the Welsh Government, will need to be amended to take account of the provisions of the Bill, once enacted.

42. It seems to us that the Bill will require considerable repeal and amendment of existing legislative provisions. We believe the Bill would be strengthened by the inclusion of a schedule of repeals and amendments, rather than leaving this as a matter to be the subject of subordinate legislation. If the Minister did not wish to commit to putting this information on the face of the Bill, as we believe she should have done, she could nevertheless have made this information publicly available at the time of introduction of the Bill. This would have greatly aided the scrutiny process. We note her evidence that work has commenced in relation to consequential

amendments, but do not agree that this is a matter solely for the implementation of the Bill.

**We recommend that the Minister publishes a list of all amendments and repeals to be made to existing legislation as a consequence of the Bill, and that she does so before the Committee completes its consideration of the Bill.**

43. As we have not seen a list of all amendments and repeals to be made to existing legislation, we have not considered the consequential and transitional provisions in the Bill.

44. We believe that the Minister should give further consideration to the consequential and transitional provisions of the Bill. In particular, we note the Minister confirmed in oral evidence that assured tenancies in the PRS will become secure occupation contracts. We welcome this, but share stakeholders' concerns that the Bill is not clear in this area.

45. We believe that any change in the law in this area should be accompanied by a significant public education and awareness raising campaign. There will also be a need for appropriate training about the new rights and responsibilities provided for under the Bill. Both of these matters come with considerable cost implications and, based on the evidence we have received, we have concerns as to whether the Minister has made sufficient provision in this regard.

**We recommend that the Minister revisits her estimate of costs for training and awareness raising about the provisions of the Bill.**

### 3. Occupation contracts

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#### Occupation contracts

##### *Background*

46. The Bill proposes introducing two main types of occupation contract. These would replace nearly all existing tenancies and licences on a day to be appointed by the Welsh Ministers.

47. The main occupation contracts are:

- the secure contract: based on the local authority secure tenancy agreement. This would be the default contract for community landlords (although certain exemptions apply). Secure contracts would always be periodic; and
- the standard contract: based on the assured short-hold tenancy agreement. This would be the default contract in the PRS. Standard contracts would be either fixed term or periodic. The Bill makes provision for a number of variants of the standard contract. [See chapter 5 for our views on standard contracts]

48. Certain core terms would apply to each type of occupation contract, known as ‘fundamental provisions’. Schedule 1 outlines the fundamental terms that apply to each type of occupation contract. The fundamental terms set out the primary rights and responsibilities under the contract, including the requirement to provide a written statement of the contract and the process for ending the contract.

49. Some of the fundamental terms can be left out or modified by agreement, but only where doing so would improve the contract-holder’s position (section 20). Other fundamental terms cannot be left out or changed.

50. “Supplementary provisions”, to be set out by the Welsh Ministers in regulations, would be incorporated into the contract unless there was an agreement between the landlord and the contract-holder not to. They could also be incorporated in a modified form.

51. “Additional terms”, such as the keeping of pets, could be negotiated and agreed between the landlord(s) and the contract-holder(s).

## *Evidence from respondents*

52. Much of the evidence we received about the Bill focused on the new types of occupation contract, the terms those contracts would contain, the length of the contracts and the practicalities of issuing contracts.

53. Respondents generally welcomed the provisions for the creation of two types of occupation contract. The Association of Residential Letting Agents (ARLA) told us it was “supportive in principle” of the provisions, adding that “the simplification of the tenancy regime is a positive step as it moves the sector in Wales away from the many types of complicated contracts that created confusion.”<sup>16</sup>

54. Some respondents, including a representative of letting agents, welcomed the ability to negotiate the individual terms of contracts. Others saw this as a particular concern, potentially open to exploitation in the case of vulnerable contract-holders. The Residential Property Tribunal (RPT) Wales said:

“The Act perceives that landlord and tenant enter into a negotiation regarding the form of the contract. In my experience this is highly unlikely. In circumstances where pressure on the rental market is high and stock turns over very quickly it is highly probable that a tenant will take what he is given.

“The protection of the Act in prescribing certain conditions which cannot be altered offers some protection as does the condition that others cannot be altered to the detriment of the tenant but it is unrealistic to suppose that in most circumstances there will be any “negotiation” at all.”<sup>17</sup>

55. We heard from the Welsh Local Government Association (WLGA) that local authority landlords would want to “avoid the complication” of negotiating contractual terms in detail on an individual basis.<sup>18</sup>

56. In contrast, representatives of private landlords and letting agents told us that contractual terms were often the subject of negotiation between landlords and tenants, citing an example of rent negotiation where the tenant had offered to undertake improvements to the property.<sup>19</sup> However,

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<sup>16</sup> Written evidence, RH13

<sup>17</sup> Written evidence, RH40

<sup>18</sup> RoP, para 37, 6 May 2015

<sup>19</sup> RoP, paras 64-69, 314-326, 14 May 2015

there was an acknowledgement that the scope available to contract-holders to negotiate depended on the demand for accommodation in a particular area, i.e. the higher the demand, the less likely a landlord would be to negotiate.<sup>20</sup>

57. A number of respondents commented on the provisions in the Bill enabling contracts to be tailored to meet specific circumstances. The RLA said that the ability to add additional terms could be problematic and suggested that the Welsh Ministers should prescribe as many supplementary terms as possible.

58. The Law Society were of the view that most terms of contracts should be fundamental terms, on the basis that if too many terms could be negotiated and varied, this would not represent an improvement on the current situation.<sup>21</sup>

59. Welsh Tenants told us it was “concerned that ‘additional terms’ will be added by landlords only, because of market exclusivity, with few landlords accepting additional terms [proposed] by contract-holders”<sup>22</sup> It went on:

“We see widespread exclusion of people in receipt of welfare from accessing private accommodation, or refusing to improve the property before let for disabled tenants, where the requirement to make reasonable adjustments are flouted.”<sup>23</sup>

60. There were a small number of general comments on the terminology adopted by the Bill, in particular the move away from using ‘tenant’ to ‘contract-holder’. Some respondents felt this change was not necessary.<sup>24</sup>

#### *Variation and modification of terms of contracts*

61. The Bill makes provision for occupation contracts to be varied. Some respondents expressed concerns about how potential legislative changes, and corresponding changes to terms, could result in a new occupation contract having to be issued within 14 days of a variation. There was particular concern about the potential penalties facing landlords who failed to comply.

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<sup>20</sup> RoP, paras 64-69, 314-326, 14 May 2015

<sup>21</sup> RoP, para 15, 30 April 2015

<sup>22</sup> Written evidence, RH36

<sup>23</sup> *ibid.*

<sup>24</sup> Written evidence, RH30



62. Monmouthshire Housing Association (MHA) welcomed the ability to vary contracts.<sup>25</sup> However, Tai Pawb said that some people would need support to enter into negotiations to vary contracts and that variations could happen so regularly that it could amount to harassment. It said:

“(…) some unscrupulous landlords might use intimidation to ensure tenants agree variation of terms by threatening eviction if they do not, or may choose to frequently vary terms amounting to harassment of the tenant (…).”<sup>26</sup>

63. A small number of respondents queried who would judge whether the modification or removal of a fundamental term ‘improved the position’ of the contract-holder. The Guild of Residential Landlords told us:

“This is a troublesome part of the Bill in our view because it leaves open so many arguments as to whether the position of the contract holder was *improved* or not. (...) In our view there is no need for it.”<sup>27</sup>

64. We heard from the RPT Wales that it would be able to deal with disputes of this nature if given jurisdiction to do so in the Bill.<sup>28</sup> In the Bill as presented, the courts have jurisdiction over such disputes.

#### *Occupation outside the scope of the Bill*

65. The Law Society noted that, under the Bill, asylum seekers accommodated by community landlords would have standard occupation contracts.

66. It stated that the Bill should replicate the existing law and exclude asylum seekers from being contract-holders, arguing that, if not excluded, it could take several months to recover possession of a property that was needed for another asylum seeker. The Law Society also noted that accommodation providers can face financial penalties if accommodation is not available for new asylum seekers when required.<sup>29</sup>

67. We received little evidence on excluded licences. However, we note the recent Supreme Court decision in *R (ZH and CN) v London Borough of Newham and London Borough of Lewisham*<sup>30</sup> which found that licences for

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<sup>25</sup> Written evidence, RH30

<sup>26</sup> Written evidence, RH28

<sup>27</sup> Written evidence, RH26

<sup>28</sup> RoP, para 338, 6 May 2015

<sup>29</sup> Written evidence, RH08

<sup>30</sup> [2014] UKSC 62

temporary accommodation (provided as a short-term expedient while a decision was taken on duty to accommodate) were excluded from the Protection from Eviction Act 1977.

68. CLA Cymru gave evidence that service occupiers, those occupying property for the better performance of their job, should be excluded from the legislation. These occupiers currently have no protection and lose their right to their home when their job is lost. This was said to be justified on the basis that the property will be required for any new employee doing the same job and that a delay in eviction of an occupier will mean that the new employee will need to be accommodated elsewhere.

### *Evidence from the Minister*

69. In relation to modifying fundamental terms of a contract, we asked the Minister what criteria she intended to use to judge whether the position of the contract-holder had been improved. Responding to this, she said:

“It’s not possible to set out in the Bill criteria for all eventualities. You made the very good point that what’s an improved position for one person wouldn’t be an improved position for another, maybe. It’s very subjective, but I think it’s right that the contract-holder takes a view on their position, and if they think it hasn’t improved, then they could seek advice—they could go to Shelter Cymru, for instance, or Citizens Advice—and of course, ultimately, it’s the court that is the last stop for them.”<sup>31</sup>

70. The Minister’s senior lawyer told us that he believed there “may be issues around natural justice” if the Bill were to specify that contract-holders themselves were to determine whether modifications improved their position. He said:

“If you have a dispute between two parties, you would normally have an objective bystander, as it were, i.e. the judge, who would come to a view on that. So, I think there would be problems in that approach.”<sup>32</sup>

71. In relation to supplementary terms, we asked the Minister why she had not included more detail on the face of the Bill. She confirmed that, as supplementary terms would deal with practical matters, for example the

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<sup>31</sup> RoP, para 43, 22 April 2015

<sup>32</sup> RoP, para 47, 22 April 2015,

payment of council tax, she had made provision for these to be the subject of regulations in order “to have the flexibility to change them” as necessary.<sup>33</sup>

72. The Minister confirmed that it was her intention that assured tenancies in the PRS would convert to secure contracts on a date to be set out in regulations.

73. In relation to the concerns about asylum seekers, the Minister confirmed that she will consider whether amendments to the Bill are necessary.<sup>34</sup>

74. In relation to other exclusions from the Bill, the Minister’s Bill manager stated that one of the reasons for removing the six-month moratorium on no-fault possession was so that licences that might otherwise need to be excluded from the legislation could be brought within the Bill.<sup>35</sup>

### ***Our view***

75. We support the principle of the introduction of two main types of occupation contract to replace nearly all existing tenancies and licences. We agree that this represents a simplification of the current system and an important step in enabling both landlords and contract-holders to understand their respective rights and responsibilities.

76. We note that the Bill makes provision for landlords and contract-holders to negotiate certain terms. In reality, we believe there is little likelihood of this taking place, particularly because of market pressures (particularly in areas where demand for rental properties is high) and, in most cases, the superior negotiating position of landlords.

77. We believe that when negotiating terms, the question of what constitutes an improvement to the position of the contract-holder requires further amplification on the face of the Bill, by way of additional regulation or by statutory guidance.

**We recommend that the Minister amends the Bill to set out more clearly the criteria for judging whether the modification or removal of a fundamental term has “improved the position” of the contract-holder. We believe this should be in the “reasonable view” of the individual**

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<sup>33</sup> RoP, paras 49-52, 22 April 2015,

<sup>34</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

<sup>35</sup> RoP, para 214, 20 May 2015

**contract-holder concerned, rather than on the basis of contract-holders in general.**

78. Furthermore, in our view there is a role for the RPT Wales in dealing with disputes about whether removal or modification of a fundamental term “improved the position” of the contract-holder. Such an approach would be preferable to presuming that a contract-holder will rely on the courts for such a judgement [see chapter 13 for our views on the role of the RPT Wales].

79. We note that section 22 enables the Welsh Ministers to add or remove fundamental provisions to a contract using both the negative and affirmative procedures. In cases where the regulations amend this Bill, once enacted, they will be subject to the affirmative procedure. Otherwise they will be subject to the negative procedure. Further, we note that regulations relating to supplementary terms will be subject to the negative procedure. We believe that these regulations should be subject to the affirmative procedure in all cases, in order to give the Assembly the necessary oversight.

**We recommend that the Minister amends the Bill to provide for regulations relating to fundamental and supplementary terms to be subject to the affirmative procedure in all cases.**

80. We note the Minister’s evidence that she will consider amending the provisions in the Bill relating to asylum seekers. We believe she should give further consideration to how the provisions in the Bill will apply to service occupiers and those provided with temporary emergency accommodation, particularly in light of our recommendation 11 (six-month moratorium).

## **Written statements**

### ***Background***

81. Currently, a tenant or licensee has no right to a written statement of the terms of their housing contract. This primarily affects tenants in the PRS.

82. Section 31 of the Bill provides for contract-holders to be entitled to such a written statement, which must be provided within 14 days of occupying the premises.

83. Failure to provide a written statement will mean the landlord is liable to pay compensation to the contract-holder.

## ***Evidence from respondents***

84. Respondents generally welcomed the provision for written statements. We heard from the National Trust that this would “help provide clarity for both landlords and contract holders”.<sup>36</sup> The HLPAs expressed similar views.<sup>37</sup> Some landlords’ representatives, including the National Landlords Association (NLA), told us that they already recommended the issuing of written statements at the start of any new tenancy as a matter of best practice.

85. However, there were some concerns about the practicalities of issuing the written statements: what would happen where a landlord had failed to provide a written statement (section 34); and the potential costs to both landlords and contract-holders of the requirement for written statements.

86. In relation to the absence of a written statement, the HLPAs said it had concerns about the enforceability of section 34. It noted that, where a landlord fails to provide a written statement within the required period, section 34 enables a contract-holder to apply to the courts for a declaration of the terms of the contract. The HLPAs were concerned about how this would be enforced in practice, and the lack of availability of legal aid. Moreover, they expressed concerns that contract-holders may not be aware of their right to apply to the courts in the first place.<sup>38</sup>

87. The RLA said that, in cases where landlords had failed to provide a written statement, there should be a ‘default contract’ in its place which would include “any provisions that the Welsh Government see fit” to include in a contract. It said this would “essentially force landlords to issue contracts correctly in line with the new guidance, or face having the contract written for them by the Welsh Government”.<sup>39</sup>

88. Welsh Tenants also proposed a default contract in cases where a landlord did not provide a written statement, suggesting that the Welsh Government’s model contract could fulfil this purpose.<sup>40</sup>

89. CLA Cymru did not support the provision of penalties for landlords who failed to issue a written statement within the required timeframe. Similarly, Pontypool Park Estate told us that penalising a landlord for not issuing a

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<sup>36</sup> Written evidence, RH16

<sup>37</sup> Written evidence, RH41

<sup>38</sup> *Ibid.*

<sup>39</sup> Written evidence, RH29

<sup>40</sup> Written evidence, RH36

written statement seemed unfair when “the law will infer a contract anyway”.<sup>41</sup> CLA Cymru also recommended extending the time period within which a landlord must issue a written statement from 14 days to 28 days in order to give landlords “sufficient time” to manage their properties.<sup>42</sup>

90. In relation to costs, we heard from the CLA Cymru that:

“The administrative costs [of replacing existing contracts with new contracts] as well as the time involved with applying the new requirements to a large portfolio of properties will be considerable, and there is a risk that this could be passed on to the tenant, in the form of higher rents.”<sup>43</sup>

91. Finally, some respondents, including Disability Wales and Let Down in Wales, stressed the importance of contracts and written statements being accessible and easy-to-understand.<sup>44</sup> Further to this, Welsh Tenants called for adequate safeguards in the form of guidance to ensure that secure contract-holders with dementia, the elderly and independent living schemes, people with undiagnosed mental health problems, and disabled people, had protection against agreeing terms they did not understand.<sup>45</sup>

### ***Evidence from the Minister***

92. In relation to written statements, the Minister stated:

“A clear, understandable, contract is essential to effective arrangements for renting a home. Both the landlord and contract-holder must have access to a written contract in order to understand their rights and responsibilities.

“The Bill will require a landlord to provide the contract-holder with a written statement of the contract no later than two weeks from the date of occupation. Most landlords will no doubt continue to issue a written contract for signature before the contract-holder moves in. The two-week period is to allow for situations where accommodation is provided at very short notice. This will ensure that every person renting a home receives a written contract.”<sup>46</sup>

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<sup>41</sup> Written evidence, RH35

<sup>42</sup> Written evidence, RH24

<sup>43</sup> *ibid.*

<sup>44</sup> Written evidence, RH03, RH05

<sup>45</sup> Written evidence, RH36

<sup>46</sup> Explanatory Memorandum, paragraph 53, page 18

## *Our view*

93. We welcome the introduction of a requirement for contract-holders to be given a written statement of the terms of their occupation contract. We note the evidence that many private sector landlords are already issuing such statements as a matter of course.

94. Where a landlord has failed to provide a contract-holder with a written statement, we do not believe it is reasonable to expect the contract-holder to go to the courts to enforce their rights, particularly given the limitations on legal aid. We support the suggestion for the imposition of a default contract in such circumstances.

**We recommend that the Welsh Government’s model contract should be used as the basis for a default contract where a landlord has failed to provide a written statement.**

## **Model contracts**

### *Background*

95. The Welsh Government intends to make model contracts available for use by landlords and contract-holders. This is intended to support landlords in complying with the duty to provide a written contract.

### *Evidence from respondents*

96. Of those who commented, there was general support for the principle of model contracts. ARLA said it was “broadly supportive”, seeing model contracts as a “sensible step” which “creates a standard for the industry to follow and guards against substandard and ill-thought out tenancy contracts that fail to provide adequate protection to both landlords and tenants.” It noted, however, that model contracts would need to be tailored “to reflect the unique features and nuances of their individual properties”.<sup>47</sup>

97. However, a number of respondents commented on the practicalities involved in issuing model contracts. Professor Martin Partington called for the model contracts to be written in plain language so that both landlords and contract-holders are able to understand their rights and responsibilities under the agreements.<sup>48</sup>

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<sup>47</sup> Written evidence, RH13

<sup>48</sup> Written evidence, RH07

98. Some respondents were critical of the likely length of the proposed model contracts, approaching 30 pages. In particular, Citizens Advice Cymru called for more work on the model contracts to ensure that “the length of the document does not stop people from knowing and exercising their rights”.<sup>49</sup>

99. The representative of the RPT Wales told us:

“From a personal point of view having seen a draft of the proposed contract I think it highly unlikely that it will be read by an average tenant before it is signed. The report published on the Welsh Government Website contains a huge amount of information. Whilst the principle that all Occupiers should be provided with a written contract is in principle a good idea, a 26-30 page document which presumably will need to be provided bilingually is unmanageable. I appreciate that not all contracts will have to contain all that is in the proposed draft standard document.”<sup>50</sup>

100. The RLA said the amount of documentation that a landlord would be required to provide to a contract-holder would be “excessive”, suggesting that this “undermines the concept of simplicity”.<sup>51</sup> We heard from one landlord, currently letting to 24 students in Houses in Multiple Occupation, who claimed he would be required to produce nearly 1,500 pages of printed matter at least once a year.

101. Finally, a number of respondents, including the RLA, suggested that contracts should be issued electronically by default rather than the contract-holder having to opt-in.

### ***Evidence from the Minister***

102. Responding to concerns about the likely length and accessibility of model contracts, the Minister told us:

“[model contracts] won’t be inaccessible. I think that what’s really important is that they have all the information that’s needed in it; that all the relevant rights and obligations for both landlords and contract holders are in it. (...) It’s got to be clear and it’s got to be not complex at all.”<sup>52</sup>

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<sup>49</sup> Written evidence, RH33

<sup>50</sup> Written evidence, RH40

<sup>51</sup> Written evidence, RH29

<sup>52</sup> RoP, para 63, 22 April 2015



103. The Minister's Bill manager explained that the government's model contract is based on an illustrative model contract, of around 9,000 words, produced by the Law Commission.<sup>53</sup>

104. The Minister confirmed that the guidance to accompany the contracts would be "very plain and concise".<sup>54</sup> Her Bill manager stated:

"We've produced and consulted on some straightforward guidance—a sort of two-page summary—just summarising what the main parts of the contract mean (...) That would be their [contract-holders'] first port of call and then they would be able to get into the contract in more detail."<sup>55</sup>

105. In relation to electronic contracts, the Bill manager said that the Bill enabled them, but:

"(...) we do think it has to be at the agreement of the contract-holder, because not everyone, obviously, is IT literate, et cetera. So, if the contract-holder's happy to have it electronically, that's fine, they can have it electronically and I think that will work for a lot of people."<sup>56</sup>

### ***Our view***

106. We support the principle of model contracts, which should act as an industry-standard, providing clarity and protection for both landlords and contract-holders.

107. We are concerned that, in reality, model contracts will be so lengthy as to become a barrier to contract-holders' knowing and exercising their rights and responsibilities. In which case, they are unlikely to represent a clear benefit for contract-holders on a day-to-day basis.

108. However, we believe that the provision for written statements and model contracts will be of benefit in the event of any issues arising in the longer term during the course of the occupation contract, as they will provide a single source of reference for all terms of that contract. With this in mind, we wish to emphasise the need for model contracts to be clear, accessible, and written in plain language. Consequently, we urge the Minister to engage in further consultation with stakeholders before finalising the

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<sup>53</sup> RoP, para 81, 22 April 2015

<sup>54</sup> RoP, para 63, 22 April 2015

<sup>55</sup> RoP, para 83, 22 April 2015

<sup>56</sup> RoP, para 85, 22 April 2015

model contracts. We consider it particularly important that such consultation is undertaken directly with sample groups of contract-holders and not just stakeholder bodies.

**We recommend that the Minister consults further with stakeholders before finalising the model contracts, and that such consultation should be undertaken directly with contract-holders, as well as representative bodies.**

109. We note that section 233 requires any notice or document given under the Bill to be given in writing and enables that notice or document to be in electronic form. We agree with witnesses that the issuing of occupation contracts should be digital by default.

**We recommend that the Minister amends the Bill so that the issuing of occupation contracts is digital by default.**

110. We believe the Assembly should maintain oversight of the final version of the model contract and any additional terms which are added to it, given its importance to the operation of the Bill.

**We recommend that the Minister amends the Bill so that regulations made under section 29(1) relating to model written statements of contract must be subject to the affirmative procedure.**

## 4. Joint contracts

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### *Background*

111. Joint contracts can currently present practical difficulties for both landlords and tenants. One tenant can end the agreement without the consent of the others, and it is also necessary for the landlord to end the entire agreement even if they only want one occupier to leave. Otherwise, the existing agreement can be “assigned” to the occupiers who are to remain in occupation, but this is a cumbersome process. This can be a particular issue in relation to relationship breakdown, but also in connection with houses in multiple occupation (HMOs).

112. The Bill proposes changes to the current law in relation to joint contract-holders. It will allow parties to be added and removed from the contract without ending the contract. The Bill also ensures all occupiers will have to act collectively to end the contract.

113. The rights of standard contract-holders to leave the contract will depend on whether they have a fixed term contract, or a periodic contract. A joint contract-holder will only be able to withdraw from a fixed term standard contract early if the contract contains a break-clause. A joint contract-holder may withdraw from a periodic standard contract by giving notice to both the landlord and other joint contract-holders in the same way as secure contract-holders.

114. The Welsh Ministers will be able to prescribe a minimum period of notice where a joint contract-holder wishes to withdraw from a periodic standard contract or a secure contract. This will be a fundamental term of all periodic agreements.

115. The Housing Act 2004 introduced the protection of tenancy deposits in relation to assured short-hold tenancies. Deposits in relation to other types of tenancy are not protected. The Bill largely re-states the current requirements for deposit protection, but extends protection to all occupation contracts. At present, they only apply to assured short-hold tenancies.

## ***Evidence from respondents***

116. The majority of respondents broadly welcomed the proposed changes to the current law in relation to joint contract-holders.<sup>57</sup> Notwithstanding this, respondents raised concern about, or sought clarification on, some of the detailed arrangements regarding these changes.<sup>58</sup>

117. The WLGA believed that the proposals relating to joint contracts “will protect the rights of all parties and not lead to the rendering of domestic abuse victims as homeless, thus providing stability for the victim and their children”.<sup>59</sup>

118. CHC suggested that the Bill “should go further in helping landlords to deal with domestic abuse”.<sup>60</sup> Both Tai Pawb and Cymorth Cymru stated that guidance would be needed for when domestic abuse is the reason for the breakdown of a joint contract.<sup>61</sup>

119. A number of respondents referred to the risk that the burden of rent would fall on the remaining contract-holders, and that arrears could accumulate.<sup>62</sup>

120. While the NUS Cymru supported the proposed changes to joint contracts it stated that the Bill requires “nuances” regarding how joint contracts will work for students. It emphasised the need to allow students to exit joint contracts without themselves or the remaining tenants incurring extra costs.<sup>63</sup>

121. Representatives of private landlords were more cautious of the proposed changes. The NLA stated:

“Whilst we both understand and commend [the] intention, to make each tenant a joint contract holder is a significant change to housing law (...) [we] would prefer to have the choice [whether to implement the proposed changes to joint contracts] rather than be forced to comply”.<sup>64</sup>

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<sup>57</sup> Written evidence, RH01, RH11, RH21, RH22, RH29, RH30, RH31a and RH32a and RoP, para 282, 30 April 2015

<sup>58</sup> Written evidence, RH07, RH24

<sup>59</sup> Written evidence, RH31a

<sup>60</sup> Written evidence, RH32a

<sup>61</sup> RoP, paras 204-205, 6 May 2015

<sup>62</sup> Written evidence, RH22, RH29 and RoP, paras 279-280, 30 April 2015

<sup>63</sup> RoP, para 281, 30 April 2015

<sup>64</sup> Written evidence, RH25

122. The RLA would like to see changes made to “balance the Bill” and called for a provision enabling all other joint contract-holders and the landlord to terminate the contract if one joint contract-holder gives notice that they wish to withdraw from the contract.<sup>65</sup>

123. The RLA suggested that the withdrawal notice period required from a contract-holder should be two months. It said:

“This would give time for the landlord to receive notice, write to the other tenants as the landlord is required and a conversation beginning between the remaining tenants and landlord.”<sup>66</sup>

124. Concerns were also raised about how deposits would be treated if one contract-holder withdraws from the contract.<sup>67</sup>

125. The Dispute Service suggested that a fundamental term should be included in all contracts which states that if one contract-holder withdraws from a contract the remaining contract-holders must replenish the deposit to the original amount. It also suggested that the model contract should allow the landlord to specify how much of the deposit each contract-holder has paid.<sup>68</sup>

126. On a related issue, the RLA raised concern about the “technical capacity” of the Deposit Protection Scheme “to adapt to [the proposed changes] and deliver a practical system to deal with the joint contract scenario.”<sup>69</sup> ARLA highlighted the potential for unintended consequences as a result of these new provisions, including a rise in costs for complying with deposit schemes.<sup>70</sup>

127. We heard concerns that reclaiming deposits from tenancy deposit schemes can already be difficult within the current arrangements. Let Down in Wales told us that tenants often accept the return of a portion of their deposit just to be able to get the money back as quickly as possible.<sup>71</sup> ARLA’s evidence confirmed that deposit schemes do have to manage situations where deposits aren’t reclaimed, highlighting the fact that the TDS (Tenancy Deposit Scheme) “has a charitable foundation from the deposits that haven’t

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<sup>65</sup> RoP, para 110, 14 May 2015

<sup>66</sup> Written evidence, RH29

<sup>67</sup> Written evidence, RH19, RH28, RH29

<sup>68</sup> Written evidence, RH19

<sup>69</sup> Written evidence, RH29

<sup>70</sup> RoP, para 358, 14 May 2015

<sup>71</sup> RoP, para 217, 30 April 2015

been reclaimed, which are going to charitable works in the sector to increase knowledge and professionalism and understanding”.<sup>72</sup>

### ***Evidence from the Minister***

128. The Explanatory Memorandum notes that the Bill takes a new approach to “the often problematic issue of joint contracts”.<sup>73</sup>

129. It states:

“The broad approach in the Bill on joint contracts is that each of the parties should, wherever possible, be treated as an individual. The intention is to give greater protection and security to the other tenant(s) who wish to remain in the property. Likewise, the Bill enables a joint contract-holder to have their interest removed by the court without it affecting the other contract-holder(s). The purpose behind this is to prevent the actions of one tenant adversely affecting the interests of others.”<sup>74</sup>

130. We asked the Minister for further detail on the provisions in the Bill relating to joint contracts. She confirmed that, if a joint contract-holder withdraws from a contract, the remaining contract-holders would become liable for the rent. She went on to state that she would want the remaining contract-holders to be given “the opportunity to show that they can pay the rent”.<sup>75</sup>

### ***Our view***

131. We agree in principle with the changes proposed by the Bill to the current law in relation to joint contracts. We welcome the greater flexibility the changes will bring to both contract-holders and landlords when dealing with joint occupation contracts in the future.

132. However, we acknowledge the serious concerns that have been raised about issues which may arise as a result of these changes. Of most concern are the potential for the burden of outstanding rent to fall to remaining joint contract holders; the potential for landlords to be left with a shortfall in rent; and the operation of deposit protection schemes.

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<sup>72</sup> RoP, para 396, 14 May 2015

<sup>73</sup> Explanatory Memorandum, paragraph 99, page 26

<sup>74</sup> Explanatory Memorandum, paragraph 100, page 26

<sup>75</sup> RoP, para 93, 22 April 2015

133. We are concerned that the Bill does not deal effectively with deposits for joint contract-holders. There appears to be no mechanism to allow a joint contract-holder leaving an occupation contract which will continue to recover their money either from the landlord or the other contract-holders, or for the landlord to ensure that a sufficient deposit is maintained in this situation. We, therefore, urge the Minister to give further consideration to the provisions relating to deposit protection.

**We recommend that the Minister considers including specific details and guidance about joint contracts to prospective contract-holders as part of a contract-holder education and awareness scheme.**

## 5. Standard contracts

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### Six-month moratorium

#### *Background*

134. Under current law, assured short-hold tenants have limited security of tenure. However, a court cannot make an order for possession under section 21 of the Housing Act 1988<sup>76</sup> to take effect sooner than six months after the tenancy commenced. This is often referred to as the “six-month moratorium”.

135. The Bill will not replicate that provision, so standard contract-holders will not be entitled to stay in the property for six months unless they have a fixed term contract of at least that duration.

136. Under the proposals in the Bill, where the contract is periodic from the outset, the earliest possession proceedings could be issued would be after the contract-holder had been in the dwelling for two months. This assumes that the landlord serves notice immediately at the start of the contract.

137. This position contrasts with a pending amendment to the Housing Act 1988 made by the Deregulation Act 2015.<sup>77</sup> That amendment maintains and strengthens the six-month moratorium in England.

138. A person provided with accommodation in the PRS by a local authority discharging its full homelessness duty will still be entitled to a minimum fixed term contract of six months (section 76(4)(c), Housing (Wales) Act 2014)<sup>78</sup>. However, where the authority provides help to secure accommodation (under section 73 of that Act), it must only be “likely” that the accommodation will be available for at least six months.

#### *Evidence from respondents*

139. Evidence from respondents showed a clear divergence in views about the removal of the six-month moratorium. Those respondents who were opposed to the proposal were concerned about a reduction in security of tenure for contract-holders, particularly vulnerable contract-holders; the implications for local authorities of meeting their statutory homelessness

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<sup>76</sup> Housing Act 1988, available at: <http://www.legislation.gov.uk/ukpga/1988/50/contents>

<sup>77</sup> Deregulation Act 2015, available at: <http://www.legislation.gov.uk/ukpga/2015/20/section/36/enacted>

<sup>78</sup> Housing (Wales) Act 2014, available at: <http://www.legislation.gov.uk/anaw/2014/7/contents/enacted>



duties; and the potential to increase levels of homelessness. In contrast, those representing private sector landlords welcomed the proposal as a means of providing landlords with greater flexibility to respond to housing need.

140. Shelter Cymru was strongly opposed to the proposal to remove the moratorium. It believed that this would result in the “bare minimum” of security for contract-holders. It felt that the Bill did nothing to address the perception of the PRS as insecure. It also felt that the proposal would contribute to Wales having the “most insecure PRS in the whole of Western Europe”.<sup>79</sup>

141. Similar views were expressed by Citizens Advice Cymru who stated that the proposal was “inconsistent with the broader aim of making the PRS a sustainable and high quality sector of the housing market in Wales”.<sup>80</sup>

142. The WLGA raised “significant concerns” about the proposal to remove the moratorium. It stated that the proposal “effectively reduces the rights of tenants in the private rented sector in Wales and undermines efforts made through the Housing (Wales) Act 2014 (“the 2014 Act”), and elsewhere within the Renting Homes Bill, to improve the quality of the private rented sector, and to promote it as a tenure of choice”.<sup>81</sup>

143. More specifically, the WLGA was concerned that the proposal “does not support efforts to reduce and prevent homelessness” and would impact on local authorities’ ability to fulfil their homelessness duties under the 2014 Act. In particular, the WLGA believed that removal of the moratorium could reduce the amount of accommodation available to authorities for housing homeless applicants and leave authorities open to challenge about the suitability of accommodation used for this purpose.<sup>82</sup>

144. The HLPAs agreed that this would inevitably lead to a challenge at a high level to clarify whether it would be acceptable for a local authority to discharge its homelessness duty in the PRS into a contract that did not provide for six months security where they were required to be “reasonably satisfied” that the property would be available for six months.<sup>83</sup>

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<sup>79</sup> Written evidence, RH18

<sup>80</sup> Written evidence, RH33

<sup>81</sup> Written evidence, RH31

<sup>82</sup> *ibid.*

<sup>83</sup> RoP, para 144, 20 May 2015

145. Finally, the WLGA warned that, “by reducing tenants' security, we expect that removal of the moratorium could lead to an increase in homelessness”.<sup>84</sup>

146. Linked to the above, Tai Pawb raised concerns about the impact of the removal of the moratorium on contract-holders from vulnerable groups, including young people and disabled people. It suggested that the proposal may encourage landlords to let to people they would not have otherwise considered because it would be easier and quicker to evict them if problems arose. In Tai Pawb's opinion, the proposal “sends the wrong message to the PRS and places vulnerable people from diverse backgrounds in particular jeopardy of a revolving door of short term tenancies”.<sup>85</sup>

147. On a related issue, Cymorth Cymru suggested that the proposal “risked increasing instability for those who need a more secure environment to flourish”.<sup>86</sup>

148. The HLPAs questioned the need to remove the moratorium on the basis that there was no evidence to suggest that it was problematic. The HLPAs believed that its removal could give rise to needless litigation.<sup>87</sup>

149. In contrast, representatives of private landlords and CHC supported the proposal to remove the moratorium.

150. The RLA stated that the proposal “has a number of benefits for both landlords and tenants, adding a degree of flexibility to the system”. It explained that the removal of the moratorium would help address the lack of availability of accommodation for “high risk tenants”, for example those who were previously homeless:

“By removing the ‘six-month moratorium’ landlords can effectively reduce the risk profile, as should the tenant not prove to be a ‘good tenant’ action can be taken to either address the situation or recover possession.”<sup>88</sup>

151. Similar points were made by CHC and the NLA.<sup>89</sup>

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<sup>84</sup> RoP, para 144, 20 May 2015

<sup>85</sup> Written evidence, RH28

<sup>86</sup> Written evidence, RH22

<sup>87</sup> RoP, para 144, 20 May 2015

<sup>88</sup> Written evidence, RH29

<sup>89</sup> Written evidence, RH32, RH25

152. In addition, the RLA explained that many landlords already use initial fixed term contracts of at least six months as a means of guaranteeing income:

“There is therefore very little evidence to suggest that the removal of the ‘six-month moratorium’ would alter the vast majority of tenancies. It would however greatly increase the flexibility of short term housing, such as those moving between homes or for study, and greatly increase the chances of landlords letting to tenants they may not have otherwise been willing to consider.”<sup>90</sup>

153. We heard from the RLA that it had produced its own model for a Long Term Tenancy Agreement which it said would be an alternative to the removal of the six-month moratorium:

“Under the RLA model, if a tenant is satisfactory then he or she would have a contractual right, if they wished, to extend a fixed term tenancy and renew for six or twelve months at a time for up to five years.”<sup>91</sup>

154. Shelter Cymru proposed an alternative model involving the offer of standard contract lengths of four-and-a-half years, following a probationary period, giving contract-holders a total of five years’ security of tenure on a cyclic basis. It said that within the five-year period, contracts may be periodic or fixed term as required, as is the case in Ireland, to enable landlords to safeguard their income. Notice periods for contract-holders would remain the same as currently proposed in the Bill.”<sup>92</sup>

### ***Evidence from the Minister***

155. The Minister believed that the six-month moratorium prevented private landlords from offering contracts to people they deemed to be high risk. She said:

“The primary aim of removing the moratorium is to encourage landlords to rent to individuals who are unlikely to be able to rent at the present time, and to be able to facilitate short-term renting.”<sup>93</sup>

156. The Minister’s Bill manager told us that most landlords wanted to keep their contract-holders for as long as possible, so the vast majority would still

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<sup>90</sup> Written evidence, RH29

<sup>91</sup> Written evidence, RH29a

<sup>92</sup> Written evidence, RH18

<sup>93</sup> RoP, para 323, 20 May 2015

want or require a minimum six months, or a minimum one year contract. He went on to say that, as the moratorium only applied to section 21-type notices, the vast majority of contracts would not be affected.<sup>94</sup>

157. The Minister's Bill manager suggested that the WLGA had misinterpreted the provisions of the Housing (Wales) Act 2014 and that an assurance by the relevant private sector landlord that a property would be available for six months would be sufficient to discharge their homelessness duties under that Act.<sup>95</sup>

158. We sought assurance from the Minister that Article 8 rights, which provide a right to respect for private, family life, home and correspondence, would be retained for those who entered into new contracts under this Bill, particularly in relation to the removal of the six-month moratorium.<sup>96</sup>

159. In her response, the Minister stated:

"The removal of the six-month moratorium does not remove a person's rights to respect for his or her home. First, (...) this relates to new contracts and therefore will not remove the rights of tenants of periodic Assured Shorthold Tenancies, insofar as those tenancies are within the initial six month period.

"Secondly, the removal of the moratorium in relation to future contracts meets a legitimate aim. That is to ensure flexibility of occupation arrangements and to allow persons who currently may only be able to occupy premises under a licence, due to the short period of the occupancy, to be able to do so under a standard contract, thus ensuring greater clarity, certainty and security."<sup>97</sup>

### ***Our view***

160. We have some concerns regarding the removal of the six-month moratorium. We have heard evidence to suggest that it will encourage landlords to rent to contract-holders who would normally find it difficult to secure accommodation in the private sector. We have also received evidence that suggests that placing more of the most vulnerable people in the private sector while at the same time reducing their security is counter-productive.

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<sup>94</sup> RoP, para 213, 22 April 2015

<sup>95</sup> RoP, para 337, 20 May 2015

<sup>96</sup> Letter to the Minister for Communities and Tackling Poverty, 8 May 2015

<sup>97</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

161. However, we also note that part of the rationale for inclusion of some shorter-term occupation licences was that the moratorium was removed and so the recovery of these properties would be expedited.

162. We are concerned that the loss of the moratorium could lead to a race to the bottom, with the private sector offering shorter tenancies across the board. This change also appears to put Wales significantly out of step with moves in England and Scotland to restrict the use of landlords' no-fault eviction processes further and could lead to a perception that Wales is offering a less secure contract in the private sector.

163. We also believe that removing the moratorium could impact on accommodation for homeless people. If local authorities believe they are likely to be challenged about the suitability of accommodation used for this purpose, they may be more reluctant to offer any PRS accommodation of less than six months to homeless applicants. We encourage the Minister to consider amending the Housing (Wales) Act 2014 to clarify her intention regarding discharge of homelessness duties in the PRS.

**We recommend that the Minister amends the Bill to prevent a landlord from recovering possession on the 'no-fault' ground during the first six months of a standard contract.**

164. However, we are conscious that this will also require a reconsideration of the decision not to exclude some temporary accommodation licences from the Bill.

165. Two Members suggested that as an alternative to the six-month moratorium, the Minister considers the use of longer term contracts with an initial probationary period, as proposed by the RLA and Shelter Cymru (see paras 153-154 above).

## **Landlord's notice**

### ***Background***

166. Sections 172 and 173 of the Bill broadly replicate section 21 of the Housing Act 1988 in that they provide a 'no-fault' ground for possession. The section 21 provision is commonly used by landlords to terminate assured short-hold tenancies.

167. Section 172 provides that a landlord of a periodic standard contract may end that contract by giving the contract-holder notice ("landlord's

notice”) that they must give up possession of the property on a date specified in the notice. The landlord cannot specify a date by which a person must give up possession which is less than two months from the date on which the notice is given (section 173).

168. Section 172 does not need to be incorporated into the occupation contract if the parties choose not to. There will be a new defence available to a contract-holder where they can demonstrate that they are subject to a retaliatory eviction (section 213 of the Bill).

169. Once a notice under section 172 has expired, the landlord has a period of two months during which they can commence possession proceedings. Section 21 notices do not expire under the current law. A landlord may therefore commence proceedings many months or years after a section 21 notice expires. It is not uncommon for a landlord or agent to serve a section 21 notice on the very day that a tenancy begins, with the tenant living under the impending threat of possession proceedings being issued without any further notice as soon as the notice expires. This will not be the case under the proposals in this Bill. Changes contained in the Deregulation Act 2015 will shortly introduce time limits in relation to section 21 notices in England.

170. A landlord can withdraw a notice under section 172, but the contract-holder may choose to decline to accept the withdrawal.

### ***Evidence from respondents***

171. While representatives of private sector landlords were generally content with the provision for landlord’s notice, as it largely replicated the current system, some respondents had more specific concerns. ARLA called for a landlord to have four months in which to make a possession claim after the notice expires, rather than the two months proposed in the Bill.<sup>98</sup>

172. Shelter Cymru objected to a landlord being able to give notice without having a specific reason and believed it conflicted with the move away from mandatory grounds.<sup>99</sup>

173. Citizens Advice Cymru called for a prohibition on landlords serving notice for six months where they had breached any fundamental term of the contract.<sup>100</sup>

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<sup>98</sup> Written evidence, RH13

<sup>99</sup> Written evidence, RH18

<sup>100</sup> Written evidence, RH33

174. The National Trust felt that the Bill implied that standard contract-holders in the private sector would have a defence to a possession claim based on convention rights, even though in their opinion such a defence would only apply to public sector landlords.<sup>101</sup>

### ***Evidence from the Minister***

175. We asked the Minister whether the introduction of the landlord's notice ground conflicted with her stated desire to move away from mandatory grounds for possession.

176. Her Bill manager confirmed that the landlord's notice ground largely replicated the section 21 notice, and that the introduction of section 21 notices under the 1988 Act had led to an increase in investment in the PRS. He said that removing provision for no-fault grounds for possession would represent a "significant change" and could potentially make Wales a less attractive place for landlords to invest.<sup>102</sup>

### ***Our view***

177. We are generally content with the provisions contained in sections 172 and 173 of the Bill.

## **Retaliatory eviction**

### ***Background***

178. Where the landlord has served notice under section 172 (where the contract is periodic) or section 195 (where there is a break clause in a fixed term contract), the courts must award possession. However, where the courts consider the eviction to be retaliatory (under section 213), it may refuse to make an order for possession.

179. A retaliatory eviction is one intended to enable the landlord to avoid their obligations to carry out repairs to the property or to ensure it is fit for human habitation. The Deregulation Act 2015 will introduce provisions to prevent retaliatory eviction in England, although they are substantially different from the proposals in Wales.

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<sup>101</sup> Written evidence, RH16

<sup>102</sup> RoP, para 238, 22 April 2015

## *Evidence from respondents*

180. The inclusion of provisions in the Bill to address retaliatory eviction was generally welcomed, although there was some scepticism as to how it would work in practice. There was also some doubt from landlords as to the scale of the problem it sought to address. Some concerns were expressed, from both landlords and tenants representatives, that it could be used as a tactic to delay evictions.

181. The Law Society initially had some concerns that it would be left to judicial discretion to determine whether the eviction was retaliatory,<sup>103</sup> although it subsequently told us that it considered the proposals in the Bill to be an improvement on the situation in England:

“In England, we currently have the Deregulation Act 2015, which makes it [retaliatory eviction] unlawful, but we think that, actually, your Bill is better, in a way, than what happens under the Deregulation Act. That is because, under the Deregulation Act, you have to have the local authority actually serve a notice before any action can be taken. We think that’s too restrictive, and that’s because local authorities often are too stretched to actually respond to all of the complaints that they receive. So, we do think that the retaliatory eviction point is a valid one.”<sup>104</sup>

182. ARLA was broadly supportive of the proposal, but believed that the wording was too weak. It said that only repairs that were “directly under the control of the landlord” should be relevant. It suggested following the provisions in the Deregulation Act 2015.<sup>105</sup>

183. The National Trust saw the provisions as being open to abuse by contract-holders and their advisers. It stated that it would be “too easy” for a contract-holder to create repairing complaints in order to avoid the mandatory nature of the possession claim”. It thought there should be greater requirements placed on contract-holders, for example evidence of written reports sent to the landlord. The National Trust felt that the proposals would “force” contract-holders to look for a defence to eviction.<sup>106</sup>

184. The NLA said it had “yet to see any credible evidence of a problem significant [enough] to justify the need for additional legislation”. The NLA

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<sup>103</sup> Written evidence, RH08

<sup>104</sup> RoP, para 70, 30 April 2015

<sup>105</sup> Written evidence, RH13

<sup>106</sup> Written evidence, RH16



saw the changes as a “politically timed reaction to fear and anecdote...”. It suggested that existing legislation should be more effectively enforced rather than making these changes.<sup>107</sup> The Guild of Residential Landlords made similar points, suggesting that the proposals in England were more sensible and less likely to result in “spurious repairs defences”.<sup>108</sup> The RLA echoed some of those concerns, but did agree that the courts should have discretion in such cases.<sup>109</sup>

185. Citizens Advice Cymru called for greater clarity on retaliatory evictions and clear links with the Code of Practice to be issued under Part 1 of the Housing (Wales) Act 2014 as well as the fit and proper person test that must be passed to become licensed. In terms of clarity, Citizens Advice Cymru called for:

- Clear timescales during which an eviction could be considered retaliatory;
- A mechanism for referring landlords to the licensing authority where they had breached their obligations;
- Allowing retaliatory eviction to be used as a defence on other grounds, not just repairs and fitness for human habitation.<sup>110</sup>

186. Welsh Tenants said the defence should be widened, and highlighted other issues that could lead to retaliatory eviction, such as harassment and landlords accessing the property without consent.<sup>111</sup>

187. The HLPAs also felt the provision was too limited, as retaliatory eviction could, and does, occur for a variety of reasons. It cited a case where the landlord had served Notice to Quit on a tenant who had given evidence in another tenant’s claim for trespass against the landlord.<sup>112</sup> It suggested that a more general “bad faith” defence would be preferable.<sup>113</sup>

### ***Evidence from the Minister***

188. We asked the Minister if she had evidence to demonstrate that retaliatory evictions occurred, and occurred in significant numbers.

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<sup>107</sup> Written evidence, RH25

<sup>108</sup> Written evidence, RH26

<sup>109</sup> Written evidence, RH29

<sup>110</sup> Written evidence, RH33

<sup>111</sup> Written evidence, RH36

<sup>112</sup> *Chapman v Honig* [1963] 2 Q.B. 502

<sup>113</sup> Written evidence, RH41

189. Responding to this, she said that it was difficult to provide exact figures for retaliatory eviction, as no possession hearings or court data acknowledged the existence of such practice. She cited Shelter Cymru's report 'Making Rights Real'<sup>114</sup>, which contained statistics about retaliatory eviction cases in Wales. She went on to say that, in her view, one instance of retaliatory eviction was one too many.

190. We also asked the Minister if she would consider widening the defence, to include possession proceedings initiated against a contract-holder in bad faith, in light of the evidence that had been presented to us. The Minister agreed to look into this further, although her senior lawyer had some concerns that this might allow contract-holders to rely on a bad faith defence where a landlord had sought possession.<sup>115</sup>

### *Our view*

191. While we welcome the provisions in the Bill to address retaliatory eviction, we agree with witnesses that the definitions need to be widened to include issues other than disrepair and fitness for human habitation, and we refer the Minister to the evidence we have received on this matter.

### **We recommend that the Minister amends the Bill to widen the definition of retaliatory eviction beyond disrepair and fitness for human habitation.**

192. We note the concerns of landlords' representatives regarding the potential for a contract-holder to use this defence to their advantage to avoid a possession claim. We therefore believe that there need to be safeguards in place to demonstrate that the contract-holder has registered a complaint with the landlord before an eviction notice has been issued. Without this, there is a risk of nuisance claims and delays as a result of protracted court proceedings.

### **We recommend that the Minister amends the Bill to include a rebuttable presumption that an eviction is retaliatory in cases where it occurs after a contract-holder has registered a complaint with the landlord about the condition of the property.**

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<sup>114</sup> Shelter Cymru report: [Making Rights Real](#)

<sup>115</sup> RoP, para 377, 20 May 2015

## Rent increases

### *Background*

193. A common variation to a standard contract will be in relation to rent levels. Section 104 of the Bill allows rent to be varied annually providing the contract-holder is given two months' notice. At present, secure tenants are only entitled to four weeks' notice of a rent increase. While there is no formal procedure for secure tenants to challenge rent increases, assured and assured short-hold tenants can challenge their rent through the RPT Wales.

194. There is no provision in the Bill for a rent increase to be challenged, except in the case of a contract that was previously an assured tenancy.

### *Evidence from respondents*

195. The majority who commented were concerned that the current right of assured tenants to apply to the RPT Wales for a rent assessment is not replicated in the Bill. Tai Pawb commented that the Bill appeared to “erode the current rights of tenants” in this area. In particular, it was concerned that the Bill seemed to allow rent increases for periodic contracts to take place two months after the contract commenced and that the Bill did not place any limit on the amount of the increase, or any mechanism to challenge it.<sup>116</sup>

196. NUS Cymru acknowledged the right of a landlord to increase rent proportionally as they saw fit, but was concerned that there was no clear right of appeal.<sup>117</sup>

197. In comments echoed by Shelter Cymru,<sup>118</sup> Tai Pawb noted that under current law, assured and assured short-hold tenants could apply to a Rent Assessment Committee (facilitated by the RPT Wales) to challenge a rent increase. It also noted that the rent could not be increased during the first 12 months of a periodic tenancy. Tai Pawb had particular concerns that some landlords would entice vulnerable occupiers, for example 16 and 17 year olds, with a low rent and then increase it significantly after the first two months. A similar point was made by the RPT Wales.<sup>119</sup>

198. Further, Tai Pawb suggested that a contract-holder who adapted the property could be especially susceptible, as they would be unlikely to want to move after the adaptations had been carried out. Tai Pawb commented

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<sup>116</sup> Written evidence, RH28

<sup>117</sup> Written evidence, RH39

<sup>118</sup> Written evidence, RH18

<sup>119</sup> Written evidence, RH40

that this could also apply where repairs had been carried out, and could be perceived as “retaliatory eviction by another means”.<sup>120</sup>

199. Welsh Tenants was particularly concerned that any move towards shorter contracts could result in more rent increases.<sup>121</sup>

200. In contrast, the RLA had no concerns about the proposals for rent increases. It suggested rent controls would have a “catastrophic impact on investment in Wales”, and went on to say that contract-holders could face rent increases as a result of extra regulation.<sup>122</sup>

201. The RPT Wales suggested that removing the provision restricting rent increases to once every 12 months meant that contract-holders could be forced to move after relatively short periods as a result of significant increases in rent that were unaffordable. It went on to say that the instability this would create in people’s lives could be partially checked by retaining the ability of contract-holders to apply to the RPT Wales to assess a market rent in the private sector.<sup>123</sup>

202. The National Trust expressed some concerns that the Bill did not appear to make provision for the rent to be increased during a fixed term contract. It said that the Trust often offered short-hold tenancies for periods of longer than a year, so there would be a need for the rent to be increased. It queried whether a term in a contract which allowed the rent to be reviewed would be permitted. The National Trust believed this uncertainty could prevent landlords from granting longer term contracts.<sup>124</sup>

### ***Evidence from the Minister***

203. We asked the Minister to respond to the suggestion that contract-holders would have fewer rights in challenging rent increases under this legislation than they currently enjoyed.

204. She told us that the rationale behind the change was the limited use that had been made of the right to challenge. She told us that, out of 300,000 cases, only 10 had been challenged, and in half of those, the RPT Wales had either confirmed the rent being proposed by the landlord or had

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<sup>120</sup> Written evidence, RH28

<sup>121</sup> Written evidence, RH36

<sup>122</sup> Written evidence, RH29

<sup>123</sup> Written evidence, RH40

<sup>124</sup> Written evidence, RH16

set a higher rent. She confirmed that the Bill did make provision for assured tenants (to whom this right would apply) to continue to have access to it.<sup>125</sup>

### *Our view*

205. We are concerned that there is no provision in the Bill for a rent increase to be challenged, except in the case of a contract that was previously an assured tenancy.

206. We believe that all standard contract-holders should be able to challenge rent increases, and we recommend that the Minister amends the Bill to make specific provision for this. Further, we believe that such challenges should continue to fall within the remit of the RPT Wales.

207. We note that the RPT Wales has been under-utilised in terms of challenges to rent increases. We believe this is likely to be the result of lack of awareness by contract-holders about their rights in this area. This is something the Minister should address.

208. We believe that there should be a minimum period of 12 months before a notice varying the rent could be served on the first occasion.

**We recommend that the Minister amends the Bill to make provision for a minimum period of 12 months before a rent varying notice can be served on the first occasion.**

**We recommend that the frequency of rent increases after the first increase be restricted to no more than once every 12 months.**

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<sup>125</sup> RoP, para 56, 22 April 2015

## 6. Supported standard contracts

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### *Background*

209. The Bill excludes supported housing providers from the requirement to issue an occupation contract where the accommodation is intended to be for six months or less. After the initial six months the contract will automatically become a supported standard contract, although the six month period can be extended. Community landlords and registered charities will be able to issue supported standard contracts in relation to supported accommodation. This is similar to a standard contract, but with two additional rights for landlords: mobility and temporary exclusion.

210. “Supported accommodation” is accommodation where support services are provided. “Support services” are defined to include:

- support in controlling or overcoming addiction;
- support in finding employment or alternative accommodation; and
- supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason.

211. The ‘mobility’ provision in the Bill allows a landlord to move a supported standard contract-holder to alternative accommodation within the same building.

212. Landlords (or someone acting on their behalf) can exclude a supported standard contract-holder from the premises for up to 48 hours without a court order. This power can only be used when the contract-holder has engaged in acts of violence against any person in the dwelling, has been doing something that creates a risk of significant harm to any person or is behaving in a way that “seriously impedes” the ability of another resident of the accommodation to benefit from the support. This power of exclusion may only be used a maximum of three times in six months.

213. There is no right of appeal by the contract-holder if they are excluded from the premises.

214. The Renting Homes White Paper originally proposed that after a period of two years, a supported standard contract would automatically convert into a secure contract. This proposal is not in the Bill.

### ***Evidence from respondents***

215. There were contrasting views on the detail of the provisions relating to supported standard contracts, although there was general support for establishing a framework for supported accommodation for the first time.

216. Tai Pawb was concerned about the status given to supported standard contracts in the Bill. It felt that these contracts should be seen as a third form of occupation contract, whereas the Bill refers to “two kinds of occupation contract”: secure and standard. Tai Pawb felt that this could further marginalise people.<sup>126</sup>

217. CHC called for shared accommodation and “very temporary” accommodation to be excluded entirely from the new arrangements. However, it felt that long term supported accommodation should be provided on the basis of secure contracts to prevent contract-holders being “moved around at the convenience of social care commissioners”.<sup>127</sup> Cymorth Cymru supported this view and suggested that the Bill should be amended to make it clear that “those in longer term supported housing should have secure tenancies and not [supported] standard contracts”.<sup>128</sup> A similar point was made by Tai Pawb in relation to ‘supported living’ projects.<sup>129</sup>

### ***Temporary exclusion***

218. Support providers emphasised the need for the Bill to strike the appropriate balance between protecting the rights of the service user and the safety of other residents and staff in supported accommodation.

219. Shelter Cymru,<sup>130</sup> and others including Citizens Advice Cymru,<sup>131</sup> had particular concerns about the exclusion power that applied to supported standard contracts. There were concerns that the power to exclude contract-holders for periods of up to 48 hours could result in rough sleeping. Welsh Tenants called for assurances that those excluded from supported accommodation would have “access to shelter as a statutory provision”.<sup>132</sup> Citizens Advice Cymru, Shelter Cymru and Tai Pawb wanted a duty to be placed on landlords to assist contract-holders to present as homeless to the

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<sup>126</sup> Written evidence, RH28

<sup>127</sup> Written evidence, RH32

<sup>128</sup> Written evidence, RH22

<sup>129</sup> Written evidence, RH28

<sup>130</sup> Written evidence, RH18

<sup>131</sup> Written evidence, RH33

<sup>132</sup> Written evidence, RH36

local authority in order to obtain temporary accommodation.<sup>133</sup> In addition, Shelter believed that any decision to exclude must be made by a senior manager.<sup>134</sup>

220. Both the Law Society and the HLPAs expressed concerns about the implications of the 48 hour temporary exclusion provision for individuals' Article 8 rights.<sup>135</sup> On this issue, Justin Bates of the HLPAs told us:

“There is not, so far as I am aware, currently any provision in the law of England and Wales that gives a landlord a unilateral right to exclude an occupier. There are powers for courts to do so. (...) in all of the powers to exclude, there is judicial input or oversight. A power to unilaterally exclude is a significant departure from the existing law.”<sup>136</sup>

221. He said there were a number of cases from the European Court of Human Rights that ruled on the need for judicial involvement when excluding individuals.<sup>137</sup> He also raised the issue of Article 6, right to a fair hearing, saying:

“Effectively, you can't be a judge in your own cause, so, if you, as the landlord, decide to exercise this power and there's no appeal from you, you are a judge in your own cause. (...) but there will also be other concerns. You're dealing with quite a vulnerable client group, by the very nature of those who have been given these occupation agreements. There will plainly be Equality Act 2010 issues that will need to be taken into account.”<sup>138</sup>

222. He warned that this provision had the potential to create litigation.

223. The Law Society also expressed concerns about the temporary exclusion power. It stated:

“As this provision [for 48 hour exclusion] applies to supported accommodation contracts, the contract-holder is likely to be vulnerable, possibly disabled or have mental health problems, and, if excluded, is likely to be homeless for two days, and at serious risk of

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<sup>133</sup> Written evidence, RH18, RH28, RH33

<sup>134</sup> Written evidence, RH18

<sup>135</sup> Article 8, European Convention on Human Rights which provide a right to respect for private, family life, home and correspondence

<sup>136</sup> RoP, para 34, 20 May 2015

<sup>137</sup> RoP, para 35, 20 May 2015

<sup>138</sup> *ibid.*



harm. They may find it very difficult to seek legal advice, access support or medication during this period.”<sup>139</sup>

224. It went on to raise concern that an agent or employee officer of a landlord could exclude a vulnerable individual without necessarily having received the appropriate training and without reference to the courts.

225. Llamau sought clarification on how temporary exclusions might be used in practice. It stated:

“We have had situations where our intensive support with young people who have severe behavioural problems may require exclusion longer than 48 hours because of poor behaviour, and/or more often than three times in a period of six months. Llamau’s ethos is never to give up on a young person, no matter how challenging their behaviour may be.”<sup>140</sup>

226. Llamau suggested that further consideration should be given to the length of exclusion and the limit on the number of exclusions provided for in the Bill. It also suggested adding “credible threats of using violence against any person in the dwelling” as another situation where temporary exclusion could be used.<sup>141</sup>

227. Cymorth Cymru, which represents providers of support services, strongly supported the ability of a landlord to exclude an individual. It cited the “often chaotic lives” of individuals and the need to protect the safety of other residents. It called for the definition of supported accommodation used in the Bill to be amended to cover support services “commissioned in” by the local authority.<sup>142</sup> As currently drafted, only community landlords can issue supported standard contracts. CHC suggested there should be a reference to services funded using the Supporting People Programme Grant.<sup>143</sup>

### ***Domestic abuse***

228. Welsh Women’s Aid was concerned that supported standard contracts would be issued to women living in refuge accommodation once they have been there for six months. They highlighted that only four per cent of women stayed in this accommodation for more than six months and

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<sup>139</sup> Written evidence, RH08

<sup>140</sup> Written evidence, RH27

<sup>141</sup> *ibid.*

<sup>142</sup> Written evidence, RH22

<sup>143</sup> Written evidence, RH32

suggested that a common reason for long-term stays in refuges was a lack of move-on accommodation. Welsh Women's Aid suggested that any transfer onto a supported standard contract would simply "exacerbate the issue of bed blocking" within emergency accommodation. They called for guaranteed access to safe and appropriate move-on accommodation, rather than a right to a supported standard contract.<sup>144</sup>

### ***Other issues***

229. Llamau raised concerns that the six month period could put pressure on support providers to make clients move into independent accommodation before they were ready. It also queried whether the supported standard contracts could be periodic.<sup>145</sup>

230. Cardiff Council queried why the definition of 'support services' in the Bill includes specific types of support, but excludes others. It suggested that a broader definition would be more appropriate.<sup>146</sup>

### ***Evidence from the Minister***

231. We asked the Minister to respond to the suggestion that the exclusion powers in the Bill violated Articles 6 and 8 of the Convention. She told us:

"I do not agree the provision cannot be justified in relation to the landlord's staff or other neighbours. The test to be applied includes violence to any person in the dwelling or risk of significant harm to any person. This may engage other convention rights of a wider category of people; it does not simply apply to residents' rights under Article 8.

"On the Article 6 point, there will be no appeal for reasons of practicality in the use of the exclusion power by landlords; a person will simply be excluded. However, the exclusion power is time-limited and also may only be exercised on limited occasions. This is not a violation of Article 6. An excluded person will still have the benefit of a supported standard contract. Furthermore, any provision to extend the 'relevant period' (i.e. prior to an occupation contract being granted) will be subject to review."<sup>147</sup>

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<sup>144</sup> Written evidence, RH11

<sup>145</sup> Written evidence, RH27

<sup>146</sup> Written evidence, RH10

<sup>147</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

232. The Minister also gave a commitment to issue guidance on the use of exclusions. She said:

“(…) whilst I would expect supported housing providers to have a policy in place relating to use of the exclusion power, I am willing to consider whether an additional power to issue guidance relating to exclusions should be added to the Bill.”<sup>148</sup>

### ***Our view***

233. We are deeply concerned by the power in section 145 of the Bill to exclude persons in supported accommodation from their property for 48 hours. It appears that this exclusion is to be at the discretion of the relevant housing provider, or one of their staff members, and is not subject to any judicial oversight. We believe that any decision to exclude a person from their home should be taken at a senior level.

234. In evidence, the Minister’s senior lawyer stated that the process was compatible with Article 8 of the Convention as it struck a proportionate balance between the rights of an excluded occupier and the rights of others. However, we are not convinced by this evidence.

235. Additionally, we are deeply concerned that the use of the exclusion power could lead to persons becoming street homeless for periods of 48 hours. Given that this power will be used against those who are also likely to have other difficulties or be vulnerable for other reasons, their temporary exclusion could ultimately lead to permanent loss of their home.

236. We believe that a failure to have any form of independent review process would lead to a breach of the excluded person’s right to a fair hearing under Article 6 of the Convention. We believe that a decision to exclude a person, being a decision taken by a body exercising a public function, would in fact be amenable to judicial review. Additionally, we understand that there is already a process in place to allow for emergency injunctions to exclude persons to be sought in the courts. We therefore see no reason for a process akin to the current emergency injunction powers not to be included in the Bill in this area.

237. Finally, it would seem to us that in the most serious cases of violent or threatening behaviour, which are those in which the power to exclude would be most likely to be justified, there are already powers for the police to

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<sup>148</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

arrest a person for that behaviour and then bail them to a different location while the matter is investigated. This would achieve the objective of removing the person from the property, carried out by the most appropriate front line enforcement body, would contain an immediate power of further enforcement in the event the person returned to the property. It would avoid the risk of homelessness by the person being bailed to a bail hostel or similar location.

238. While we acknowledge the Minister's commitment to issue guidance on the use of temporary exclusions, we do not believe that this is sufficient to deal with the concerns raised in evidence.

**We recommend that the Minister amends the Bill to remove the temporary exclusion provisions within supported standard contracts.**

**If the provision for temporary exclusions is not removed from the Bill, we recommend that the Minister amends the Bill to provide for an independent review of decisions to exclude persons in supported accommodation from their property for 48 hours, and that such reviews should be able to take place within the exclusion period.**

**Further, and if the provision for temporary exclusions is not removed, we recommend that the Minister makes arrangements for any decision to temporarily exclude a person in supported accommodation from their home to be taken at a senior level.**

## 7. Succession rights

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### *Background*

239. At present, succession rights vary considerably between different types of tenancy, in particular secure and assured tenancies. The Bill aims to provide a more consistent approach to succession rights. Sections 73 to 83 of the Bill establish succession rights within all occupation contracts, other than fixed-term standard contracts (section 139) and licences (section 155). Succession provisions are made fundamental terms of occupation contracts under section 154.

240. Under the Bill, where a sole contract-holder dies, another person can succeed to the contract. That person will be qualified to succeed if they are either a “priority successor” or “reserve successor” of the contract-holder.

241. A priority successor is the spouse, civil partner or unmarried partner of the contract-holder, providing they were occupying the dwelling as their only or principal home at the time of the contract-holder’s death.

242. A reserve successor is someone who is a family member of the contract-holder who occupied the dwelling as their only or principal home at the time of the contract-holder’s death and for the 12 months previously.

243. In some circumstances, a carer may qualify as a reserve successor. To qualify, the person must have provided unpaid care at any time during the previous 12 months to either the contract-holder or a member of that person’s family who lived with the contract-holder. Additionally, they must have, throughout the previous 12 months, either lived in the dwelling, or lived with the contract-holder. The carer must have no other dwelling that they are entitled to occupy as a home.

244. In some instances there will be more than one person qualified to succeed. Here, a priority successor will take precedence over a reserve successor. Where there is more than one qualified successor, the parties can decide between themselves who will succeed; if they cannot agree the landlord will decide. Any decision made by the landlord can be appealed to the courts.

### *Evidence from respondents*

245. The majority of evidence received on the subject of succession rights focused on succession in the social housing sector.

246. Many respondents welcomed the principle of the Bill’s provisions regarding succession rights.<sup>149</sup>

247. Citizens Advice Cymru noted that they were pleased to see the “strengthening and clarity” of succession rights, in particular the inclusion of carers within this.<sup>150</sup> Disability Wales echoed that view.<sup>151</sup>

248. While the City and County of Swansea agreed with the proposals for succession rights for carers and reserve successors, in view of the “current pressures on the [social] housing stock”, it welcomed the ability of authorities to take possession of a dwelling if there was significant under occupation.<sup>152</sup>

249. The WLGA welcomed the proposals and acknowledged that the Bill attempts to clarify the position for local authorities and the registered social landlord sector. However, it stated that “the reality is that there’s still only a finite number of succession opportunities”.<sup>153</sup>

250. A number of respondents raised concern about the impact of the succession proposals on the rental market. The National Trust believed the proposals could “impede the efficient operation of the rental market” and “see contract-holders being entitled to an extra succession, potentially tying up a property for decades more than under the existing Assured Tenancies regime”.<sup>154</sup>

251. Similar views were expressed by the CLA Cymru who objected in principle “to the potential for two successions”. It described the proposals as “anachronistic”, and questioned why, if the reforms in the Bill are designed to increase flexibility, the Bill is “seeking to encumber properties for generations”.<sup>155</sup>

252. Cardiff Council suggested that the changes to succession arrangements are more complex than at present. It expressed concern that the new provisions will increase the length of contracts “at the detriment of those on our waiting list in urgent need of housing”.<sup>156</sup>

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<sup>149</sup> Written evidence, RH01, RH03, RH21, RH32, RH33, RH36

<sup>150</sup> Written evidence, RH33

<sup>151</sup> Written evidence, RH03

<sup>152</sup> Written evidence, RH01

<sup>153</sup> RoP, para 120, 6 May 2015

<sup>154</sup> Written evidence, RH16

<sup>155</sup> Written evidence, RH24

<sup>156</sup> Written evidence, RH10

253. A private landlord suggested it would be “prudent” to enable a landlord to negate the provisions regarding succession if the successor was without the financial means to fulfil the contract.<sup>157</sup>

254. Welsh Tenants suggested that the proposals relating to succession rights require further clarity, either in guidance or perhaps on the face of the Bill.<sup>158</sup>

255. There was also some confusion from respondents over how the succession arrangements will apply to secure contract-holders in the PRS and whether assured tenancies in the PRS will become secure contracts.<sup>159</sup>

256. Some respondents raised concern about the proposal for carers to qualify as a “reserve successor” and of the definition of “carer” provided in the Bill.<sup>160</sup>

257. CHC was sceptical of the proposal in relation to carers and raised concern about the potential for “false” claims, which would be difficult to investigate and prove.<sup>161</sup> The President of the RPT Wales suggested that the Tribunal would be able to adjudicate in succession disputes if they were given jurisdiction.<sup>162</sup>

258. CHC added:

“(…) extending succession rights to carers will add to the pressures on what is an already limited supply of social housing in many areas of Wales.”<sup>163</sup>

259. The National Trust commented:

“Whilst tackling the social problems associated with the provision of long term care is laudable, private landlords should not find their properties encumbered in pursuit of this goal. If implemented, the proposal would reduce flexibility for landlords (…).”<sup>164</sup>

260. Citizens Advice Cymru highlighted that the definition of a carer in the Bill is different to that used in the Social Services and Well-being (Wales) Act

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<sup>157</sup> Written evidence, RH21

<sup>158</sup> RoP, para 346, 30 April 2015

<sup>159</sup> Written evidence, RH16, RH24

<sup>160</sup> Written evidence, RH16, RH30, RH32

<sup>161</sup> Written evidence, RH32

<sup>162</sup> RoP, para 309, 6 May 2015

<sup>163</sup> RoP, para 118, 6 May 2015

<sup>164</sup> Written evidence, RH16

2014. It suggested that the Bill be amended so that the definition of ‘carer’ replicates that used in that Act.<sup>165</sup> A registered social landlord also expressed concerns about the definition of carer used in the Bill.<sup>166</sup>

### ***Evidence from the Minister***

261. The Minister confirmed that under the proposals in the Bill, a successor would have a right to a contract in the particular dwelling in which they had been residing.<sup>167</sup>

262. The Minister’s Bill manager added:

“(…) if they are a reserve successor, as opposed to a priority successor, there is scope if they are under-occupying for the landlord to provide suitable alternative accommodation in that situation, to try and make sure that there is the most effective use of social housing. But, there’s no such ability to effectively relocate a priority successor, who might be a husband, wife or partner.”<sup>168</sup>

263. In relation to the definition of ‘carer’, the Minister stated that different definitions had been in the Bill and the Social Services and Well-being (Wales) Act 2014, “out of a necessity”. While accepting the benefits of ensuring consistent definitions within Welsh legislation, she considered that there was a clear need for separate definitions in this case.<sup>169</sup>

264. The Minister added:

“The purpose of the definition of carer in section 77 is to extend the right to succeed to a wider category of people who are carers, but who are not family members of the contract-holder.

“The Social Services and Well-being Act does not draw a distinction between family members and other carers, unlike the Bill, it simply focuses on those who are providing care, whatever [their] relationship with the cared for person.

“Under the Renting Homes Bill, there must be a connection between the carer and either the contract-holder, or a member of the contract-holder’s family living at the time with the contract-holder, because the

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<sup>165</sup> Written evidence, RH33

<sup>166</sup> Written evidence, RH30

<sup>167</sup> RoP, para 124, 22 April 2015

<sup>168</sup> RoP, para 125, 22 April 2015

<sup>169</sup> Letter from the Minister for Communities and Tackling Poverty, 7 May 2015



Bill confers rights to succeed to the occupation contract formerly held by the contract-holder. In addition, given section 77 of the Bill applies other [than] to people who are not related to the contract-holder, it is important not to discount those who care on a voluntary basis, as is the case in the definition in the Social Services and Well-being Act.”<sup>170</sup>

### *Our view*

265. We note that the proposals relating to succession rights have been broadly welcomed by respondents. We believe the Bill will provide a more consistent approach to succession across social housing and private rented sectors, and we therefore support the proposed changes to succession rights.

266. We agree in principle with the provision for both priority and reserve successors in the Bill. We note that, with regards to priority successors, the Bill will extend rights to partners who are not spouses or civil partners.

267. With specific reference to reserve successors, we acknowledge the right of a landlord to take possession of a dwelling if that dwelling has become under-occupied. We agree that, on these occasions, a landlord must provide suitable alternative accommodation to the reserve successor and cover the expenses incurred by the contract-holder when moving.

268. With regard to carers having rights as reserve successors, we note that there were varying views on this issue. We acknowledge the concerns that extending succession rights in this way could have a negative impact on the availability of housing stock for the rental market in Wales. However, we support the proposal that reserve successor status should be afforded to those who give up their own homes to provide unpaid care for another person in that person’s home.

269. On a related point, we note that concerns were raised about the definition of “carer” provided for in the Bill. While we support the principle that, where possible within Welsh law, there should be consistency of interpretation of terminology, we are satisfied with the Minister’s explanation on this matter and do not believe a change to the definition is required.

270. In relation to the potential for “false” succession claims, while we do not suggest that the provisions in the Bill will necessarily give rise to such

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<sup>170</sup> Letter from the Minister for Communities and Tackling Poverty, 7 May 2015

claims, we welcome the evidence from the RPT Wales that resolving succession disputes is a role that could reasonably be undertaken by the RPT Wales. We recommend that the Minister gives consideration to making provision for this. (See chapter 13, Use of the Courts.)

## 8. Occupation contracts for 16 and 17 year olds

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### *Background*

271. Under the current law, a person under the age of 18 cannot hold a tenancy in Wales or England. However, a 16 or 17 year old can hold a licence. Where a landlord tries to grant a tenancy to a 16 or 17 year old, the law provides that the landlord will hold that tenancy on trust for the minor until they reach the age of 18. The minor is required to pay rent for their use of the property but can repudiate the contract at any time and leave the property. Any remaining fixed term of the agreement would be ended automatically.

272. Sections 229-230 of the Bill relate to young people. Under section 230, a 16 or 17 year old will be able to hold an occupation contract as if they were aged 18 or over.

### *Evidence from respondents*

273. There was relatively little evidence received on this point. Of those who commented, the majority, including representatives of local government, the NUS Cymru, Let Down in Wales and Welsh Tenants, supported the proposals relating to 16 and 17 year olds in principle.<sup>171</sup> The WLGA stated:

“There are many instances where it is necessary for a young person to live independently, and we welcome a legal framework which removes any barrier to a young person establishing a home in the rented sector.”<sup>172</sup>

274. It subsequently questioned whether consideration should be given to including a requirement in the Bill for 16 and 17 year olds to “undergo some form of statutory assessment”, for example of their suitability and capability to be a contract-holder without support, before entering into occupation contracts. As an alternative, the WLGA suggested “a negotiated position whereby the landlord could choose to put in additional term/s in the contract to cover the acceptance of support; this would enable a case by case basis to be established”.<sup>173</sup>

275. Linked to the above, both Welsh Tenants and the City and County of Swansea emphasised the importance of providing young people with

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<sup>171</sup> Written evidence, RH01, RH11, RH22, RH31, RH33, RH37

<sup>172</sup> Written evidence, RH31

<sup>173</sup> Written evidence, RH31a

appropriate support when living independently. Welsh Tenants expressed a preference for a form of supported contract with additional support provided as a safeguard.<sup>174</sup> The City and County of Swansea said that “support in suitable accommodation must remain the primary focus of solving housing problems for young people”.<sup>175</sup>

276. Cymorth Cymru suggested that specific guidance would be needed for 16 and 17 year olds so that they are made aware of any potential risks associated with entering into occupation contracts.<sup>176</sup>

277. The HLPAs had no real concerns about the proposals, noting that community landlords “already grant tenancies to such children (usually as part of their homelessness duties)” and that they frequently did so without properly understanding the consequences.<sup>177</sup>

278. The Law Society, however, did not support the proposals for 16 and 17 year olds to enter into occupation contracts. It queried whether young people should be “exposed to any risk [associated with] holding a legal interest and having contract terms enforced against them when they are deemed as vulnerable and perhaps less likely capable of sustaining a tenancy”.<sup>178</sup>

279. In addition, the Law Society suggested that there may be more practical difficulties associated with granting contracts to 16 and 17 year olds. It was of the view that, in cases of a minor breach of contract, for example, not granting access to the property for gas safety checks, no injunction would be able to be obtained by the landlord against a 16 or 17 year old. Whereas, it said, a landlord could seek injunctive relief in the case of an adult contract-holder.<sup>179</sup>

280. Both ARLA and the Royal Institute of Chartered Surveyors (RICS) believed that, regardless of the proposed changes, landlords in the private rented sector were more likely to choose tenants over the age of 18.<sup>180</sup>

281. While landlord and letting agent representatives generally had no objections to the proposals relating to 16 and 17 year olds in principle, the RLA highlighted some complications associated with dealing with minors,

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<sup>174</sup> RoP, para 356, 30 April 2015

<sup>175</sup> Written evidence, RH01

<sup>176</sup> Written evidence, RH22

<sup>177</sup> Written evidence, RH41

<sup>178</sup> Written evidence, RH08

<sup>179</sup> RoP, para 53, 30 April 2015

<sup>180</sup> RoP, paras 410-416, 14 May 2015

such as difficulties in taking a minor to court, and raised concerns about the potential for unintended consequences, for example, the ability of minors to obtain a contract for utilities.<sup>181</sup>

282. A number of respondents, including NUS Cymru, ARLA and RICS, questioned whether 16 and 17 year olds would be able to enter into contracts for utilities and insurance.<sup>182</sup> Both ARLA and RICS suggested that this could make the provisions relating to occupation contracts for this age group difficult to deliver in practice.<sup>183</sup>

283. In light of this, we asked Dŵr Cymru and British Gas to outline their respective positions in terms of offering contracts to 16 and 17 year olds. Dŵr Cymru said:

“(…) we are a statutory water and sewerage undertaker and as such, we do not enter into contracts with our customers and we provide a supply and service to properties in the area that we serve regardless of the age of those people occupying them.”<sup>184</sup>

284. British Gas, however, told us that, in routine circumstances, it would not offer an account to anyone under the age of 18. It added that, where a minor was looking to switch to British Gas, it “would not take on the account of anyone under the age of 17” and that “instead, a guarantor would be required”.<sup>185</sup>

285. We heard from Let Down in Wales that 16 and 17 year olds would be likely to have to make use of pre-payment meters, which can prove more expensive than other methods of paying for utilities.<sup>186</sup>

286. In response to this, British Gas told us that, if a 16 or 17 year old occupied a property where a pre-payment meter was already installed, they would be required to remain on this payment type until they reached the age of 18. In circumstances where a credit meter was already installed at a property which a minor subsequently occupies, that minor “would be encouraged to accept the [installation] of a pre-payment meter.”<sup>187</sup>

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<sup>181</sup> RoP, paras 210-215 and 366, 14 May 2015

<sup>182</sup> RoP, para 348 and 355, 30 April 2015, and paras 212-213 and 407-408, 14 May 2015

<sup>183</sup> RoP, para 408, 14 May 2015

<sup>184</sup> Written evidence, RH42

<sup>185</sup> Written evidence, RH04a

<sup>186</sup> RoP, para 355, 30 April 2015

<sup>187</sup> Written evidence, RH04a

287. Making a similar point to Let Down in Wales about pre-payment meters, the HLPAs suggested that enabling occupation contracts for 16 and 17 year olds may be “something you’d want to limit to public sector landlords”.<sup>188</sup>

### ***Evidence from the Minister***

288. In setting out her reasons for enabling 16 and 17 year olds to hold occupation contracts, the Minister provided a specific example of a situation where she believed the proposal to allow 16 and 17 years to be contract-holders would be beneficial. She explained that 16 or 17 year olds cannot be successors at present, but the new provisions would alter this position.<sup>189</sup> The Minister’s Bill manager said that the proposals to allow 16 and 17 year olds to be contract-holders was a justified policy as it would remove the “block” that currently prevents a contract being held by a 16 or 17 year old in their own name.<sup>190</sup>

289. The Minister’s senior lawyer said that the provisions in the Bill were “enabling provisions”<sup>191</sup> and that the alternative was “complicated trust arrangements, which landlords are reluctant to enter into”.<sup>192</sup>

290. We asked the Minister where the impetus for the proposal in the Bill had come from. Her Bill manager confirmed that they had been included in the original Law Commission proposals, which the Welsh Government had consulted on during the Bill’s White Paper phase, and that these proposals received “strong support”.<sup>193</sup> The Minister added that, while there was not significant demand for these proposals at the current time, “this is the right Bill in which to do it [enable 16 and 17 year olds to be contract-holders] and if we don’t make a move now, I don’t know when we would.”<sup>194</sup>

291. The Minister confirmed that the Bill does not “remove any responsibilities for care or housing a local authority may have to [16 and 17 year olds] under any other legislation”.<sup>195</sup> This included the ability of local authorities to discharge their homelessness duties under the Housing Act 2014 into the private rented sector.

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<sup>188</sup> RoP, para 55, 20 May 2015

<sup>189</sup> RoP, para 168, 22 April 2015

<sup>190</sup> RoP, para 166, 22 April 2015

<sup>191</sup> RoP, para 171, 22 April 2015

<sup>192</sup> RoP, para 167, 22 April 2015

<sup>193</sup> RoP, para 285, 20 May 2015

<sup>194</sup> RoP, para 254, 20 May 2015

<sup>195</sup> RoP, para 256, 20 May 2015

292. We asked the Minister about the potential for the provisions relating to 16 and 17 year olds to alter the common law in Wales. Responding to this, she said:

“Section 230 [Contract-holders aged 16 and 17], which allows those aged 16 and 17 to hold an occupation contract on the same basis as those aged 18 and over, is an enabling provision to address issues in housing this age-group. Since the provision is limited to occupation contracts we do not believe there is scope for the common law to be altered more widely.”<sup>196</sup>

293. We also asked whether it was the Minister’s intention for a minor to be able to succeed to a long lease in Wales, as it appeared to us that section 230(5) would allow for this. On this point, the Minister confirmed:

“(…) section 230(5) is limited to occupation contracts under the Bill and, since long leases of more than 21 years are specifically excluded from being occupation contracts, we do not believe the Bill would allow minors to succeed to such leases.”<sup>197</sup>

294. We put the concerns about 16 and 17 year olds being unable to obtain contracts for utilities to the Minister. Her senior lawyer said that such contracts would be deemed as “necessaries” and would therefore be permitted under the common law. He went on to state:

“If it’s a contract for what’s known as ‘a necessary’, then the contract is enforceable. It’s the courts that determine what is necessary, but one would assume that utilities, certainly, are matters that are necessary for a 16 or 17-year-old to live.”<sup>198</sup>

295. The Minister reported that her officials had held discussions with representatives from British Gas and Dŵr Cymru, and they had confirmed that they would provide utility contracts to 16 and 17 year olds. However, it was unclear whether this would be on a pre-payment meter basis.<sup>199</sup>

296. In relation to the ability to obtain injunctions against 16 or 17 year olds, the Minister confirmed that, if a 16 or 17 year old was party to an occupation contract, an injunction could be sought against them. She added that failure to allow entry for purposes such as gas safety checks “would be a breach of

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<sup>196</sup> Letter from the Minister for Communities and Tackling Poverty, 16 April 2015

<sup>197</sup> Letter from the Minister for Communities and Tackling Poverty, 16 April 2015

<sup>198</sup> RoP, para 153, 22 April 2015

<sup>199</sup> RoP, paras 267-277, 20 May 2015

a term of the contract and alternative appropriate remedies could be sought”.<sup>200</sup>

297. The Minister’s senior lawyer also confirmed that the Bill “provides that a young person can’t repudiate [an occupation] contract just on the basis that they entered into it as a young person”.<sup>201</sup>

### *Our view*

298. We are concerned by the proposal to grant occupation contracts to minors. While we applaud the intention to help young people secure and maintain their own accommodation, we believe the proposals may be unworkable in practice and may have unintended effects.

299. In particular, we remain of the view that a minor would find it difficult to enter into ancillary contracts for utilities and other items relevant to their occupation, such as contents insurance for their possessions.

300. We heard from the Minister that these contracts would be considered to be ‘necessaries’ and, as such, permitted under the common law relating to them. However, we are less sure of this, and we do not see how the Minister can be confident on this point without specifically legislating to make this the case. The law relating to necessaries is complex and we are aware that, to date, the courts appear to have acted to limit contracts being regarded for necessaries where possible. The test for necessaries is both a legal and factual test. So while a court would be likely to hold that a utility contract would pass the factual test for a necessary, we can see that it is possible for the courts to refuse to accept that it passed the legal test, perhaps because of a public policy reason, such as that a decision on this issue would have the effect of altering the common law in England as well.

301. It follows that, if utility providers are not prepared to accept that the courts are likely to enforce their contracts with 16 and 17 year olds, they are likely to only provide services to minors on a pre-payment basis, which could be a more expensive option.

302. We are also unsure how contracts for insurance products, such as home contents insurance, will be delivered, as these are not arranged on a pre-payment basis.

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<sup>200</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

<sup>201</sup> RoP, para 307, 20 May 2015



303. We are, therefore, concerned that the Bill places 16 and 17 year olds in a position where they can enter into occupation contracts, but where the additional necessary services that they need in order to utilise that property may be unavailable or only available on an unattractive basis. This is in contrast to the current system under which a 16 or 17 year old is more usually granted a tenancy or licence which is underwritten and supported by a third party, often a local authority social services department.

304. Additionally, part of the protection currently afforded to minors is that they can repudiate contracts even where they have contracted for a fixed term. The changes appear to provide little additional support to landlords while eroding the traditional protection afforded to minors.

305. We are concerned that the main driver for these changes is less about the rights of young contract-holders and more about landlords who fail to properly understand the nature of the contracts they enter into. We therefore question whether this issue is not better addressed by education of landlords rather than legislation.

306. We note the evidence that providing the necessary support to enable minors to live in suitable accommodation should remain the focus of solving housing problems for young people; this is something that we agree with. The evidence we received from a number of respondents suggested that, in the PRS at least, landlords would be unlikely to enter into contracts with 16 and 17 year olds. Additionally, we are concerned that the private sector may not provide the right support for these potentially vulnerable contract-holders, who could be open to exploitation.

**We recommend the Minister amends the Bill so as to restrict its provisions relating to 16 and 17 year olds to occupation contracts issued by community landlords.**

307. We acknowledge the strength of evidence relating to the importance of providing young people with appropriate support when living independently. We believe that all 16 and 17 year olds entering into contracts should be entitled to suitable and relevant support and guidance.

**We recommend that the Minister amends the Bill so that the provision of guidance and support is a statutory requirement of all landlords when offering contracts to 16 and 17 year olds.**

## 9. Grounds for possession

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### *Background*

308. Part 9 of the Bill sets out the circumstances in which landlords can seek possession of a property. Specifically, chapters 3 to 5 and 7 of Part 9 set out the grounds for possession.

309. At present, grounds for possession are listed in legislation, but there is no requirement that they are reproduced in a tenancy agreement. The Bill provides for six grounds for possession:

- breach of contract;
- estate management grounds;
- contract-holder's notice;
- landlord's notice;
- landlord's notice under a fixed term contract; and
- serious rent arrears.

310. There are a limited number of mandatory grounds for possession in the Bill, for example serious rent arrears (for standard contracts). Where a mandatory ground is proved, the courts must award possession. This is subject to the rights of the contract-holder under the Convention (Convention rights). Other Convention rights are relevant to landlords.

### **Serious rent arrears**

311. Currently, housing associations may seek possession under Ground 8 of Schedule 2 to the Housing Act 1988 where a tenant has serious rent arrears. Ground 8 is a mandatory ground based on serious rent arrears, so the courts must award possession if the ground is proved. The courts cannot take into account the individual circumstances of the tenant. Some housing associations, particularly those created following stock-transfer, have generally agreed not to issue notice on the basis of Ground 8.

312. The Bill does not replicate this ground for secure occupation contracts. However, under section 179, a mandatory ground based on serious rent arrears will be available in the case of standard contracts. For secure contracts, landlords will still be able to seek possession for rent arrears on the basis of a breach of contract (section 156) but this will be at the discretion of the courts.

## ***Evidence from respondents***

313. The removal of Ground 8 for secure contracts was broadly welcomed by those who commented on this matter. The Law Society said that the removal of this ground would “provide the court with a wider discretion as to whether or not to make a possession order”.<sup>202</sup>

314. It also welcomed the retention of a similar provision to Ground 8 for standard contracts “so as not to deter the private rental market where there is a desperate shortage for housing”. It said that the removal of this ground for standard contracts “would have deterred landlords from renting their properties.”<sup>203</sup>

315. Tai Pawb supported the removal of the ground in relation to secure contracts on the basis that “it levels the playing field between Local Authority Housing and Registered Social Landlords where inequity has existed in relation to rent arrears”.<sup>204</sup> It said that the Bill “strikes the correct balance as we recognise that there may be times where eviction is the only course of action, in the face of serious rent arrears, and this can still be achieved through the discretionary powers of judicial oversight.”<sup>205</sup>

316. However, CHC, Barclays and the Council of Mortgage Lenders (CML) had some concerns about the removal of Ground 8, with CHC “strongly” proposing its retention.<sup>206</sup> CML said that removing the ground “could lead to a perception of increased risk in [the social housing] sector if the ability of [housing associations] to protect their rental income streams were to be weakened”. CML and the Principality shared the view of CHC that, although Ground 8 is seldom used, it “is a valued last-resort option for landlords”.<sup>207</sup>

317. CHC added:

“(...) ground 8 for me, in terms of the RSL sector, is part of the edifice of confidence, and that edifice of confidence includes good governance across the RSL sector (...) It includes an effective regulation system and that includes the confidence of lenders who are absolutely crucial if housing associations are to meet the supply needs across Wales. My worry here is that anything that chips away at that edifice of confidence, and that includes ground 8, which lenders

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<sup>202</sup> Written evidence, RH08

<sup>203</sup> *ibid.*

<sup>204</sup> Written evidence, RH28

<sup>205</sup> *ibid.*

<sup>206</sup> Written evidence, RH32

<sup>207</sup> Written evidence, RH15

have indicated to us could potentially be an issue if we're not able to act in the pursuit of rent arrears, may result in the cost of lending going up ultimately, which will mean less homes being built across Wales."<sup>208</sup>

318. On this point, the Principality said:

"It would be fair to say we supported the CML view for the retention of this right – not least on the basis that we detected it would be exercised sensitively, selectively and as a last resort by the sector."<sup>209</sup>

319. However, the Principality did not believe that rental income streams for the sector would be materially weakened by the loss of Ground 8, saying:

"(...) our assessment of the strength of individual associations encompasses a very broad range of indicators of which this aspect would be a relatively minor part."<sup>210</sup>

320. Barclays, in contrast, stated:

"Removal of mandatory possession ground 8 would lead to a perception of increased risk in this sector [commercial lending to housing associations] if the ability of registered providers to protect their rental income streams were to be weakened. Any increase in risk to the funders could potentially lead to an increase in the pricing of any debt for the Housing association sector and this factor should be debated further."<sup>211</sup>

321. A number of respondents, including the Law Society and CHC, referred to increases in rent arrears as a result of welfare reform. On this point, the Law Society felt that the courts should be provided with guidance emphasising the need for rent arrears to be treated seriously and not be allowed to accumulate to levels where repayment was not a viable option.<sup>212</sup>

322. Citizens Advice Cymru were opposed to any mandatory ground for rent arrears, including in respect of standard contracts.<sup>213</sup>

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<sup>208</sup> RoP, para 169, 6 May 2015

<sup>209</sup> Written evidence, RH43

<sup>210</sup> *ibid.*

<sup>211</sup> Written evidence, RH44

<sup>212</sup> Written evidence, RH08

<sup>213</sup> Written evidence, RH33

### ***Evidence from the Minister***

323. In relation to Ground 8, the Minister stated that, given the current limited use of the ground, as well as “the general inflexibility provided to courts in considering this ground and the real possibility that such an order may violate human rights and equality law, abolishing this Ground is the only viable option for establishing a single secure contract”.<sup>214</sup>

324. We asked her why she had chosen to distinguish between secure and standard contracts and retain the Ground 8 equivalent in the case of the latter. Responding to this, she said:

“It’s different for private landlords [expected to issue standard contracts] because it could be that they’re relying on the rent for that property to pay their own mortgage, for instance.”<sup>215</sup>

### ***Our view***

325. We support the proposal to remove the mandatory ground for possession for serious rent arrears (Ground 8) in relation to secure occupation contracts. We believe it is preferable for the courts to have discretion to take account of the individual circumstances of contract-holders when deciding whether to grant an order for possession, particularly as some factors leading to serious rent arrears can be outside the control of the contract-holder, for example, lengthy delays in the payment of housing benefits.

326. We note that very little use has been made of Ground 8 by housing associations, particularly as a result of developments in human rights and equality law. We also note that local authorities do not currently have access to any mandatory ground for possession on the basis of serious rent arrears. As such, we do not agree that the removal of Ground 8 will weaken the ability of housing associations to manage their housing stock or protect their rental income streams.

### **Contract-holder’s notice**

327. Sections 208 to 210 of the Bill apply only to secure contracts and relate to circumstances where the contract-holder has given notice to the landlord, but not left the property. In such cases, the courts must make an order for

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<sup>214</sup> Explanatory Memorandum, para 82, page 23

<sup>215</sup> RoP, para 323, 22 April 2015

possession, but the contract-holder can ask the courts to review the landlord's decision to make a claim for possession before the order is made.

### ***Evidence from respondents***

328. The HLPAs told us that it had “very real concerns” about sections 208 and 209 on the basis that “we do not see any need for the absolute ground for possession and are unaware of any evidence which demonstrates why it is necessary to abandon the ‘reasonableness’ criteria which has been in place since at least 1915”.<sup>216</sup>

329. Further to this, the HLPAs were also concerned that section 208(2) “appears to assert that a court *must* make a possession order *unless* a defence based on the European Convention of Human Rights is made out.” It said that the reason for this might be that a disproportionate interference with the rights of the occupier(s) would be unlawful under the Human Rights Act 1998. However, it noted that there were other defences which were similarly unlawful, citing the example of disability discrimination protections under the Equality Act 2010.<sup>217</sup>

330. The HLPAs were of the view that, although it might be said that these defences could be raised under section 209, this was not clear. It argued that, for the avoidance of doubt, section 208 should be amended. It noted that the same issues arise under section 211.

### ***Our view***

**We recommend that the Minister gives further consideration to sections 208 and 209 relating to possession claims made on the ground of contract-holder's notice, in the light of the evidence from the Housing Law Practitioners Association.**

### **Estate management**

331. Shelter Cymru recommended that a landlord should always pay the reasonable removal expenses of a contract-holder when that person is evicted on estate management grounds. Currently, the Bill proposes some exceptions so that expenses are only payable in respect of certain grounds.<sup>218</sup>

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<sup>216</sup> Written evidence, RH41

<sup>217</sup> *ibid.*

<sup>218</sup> Written evidence, RH18

332. Welsh Tenants also felt that “home-loss” payments for secure contract-holders moved on estate management grounds should be reinstated in line with current Welsh Government policy.<sup>219</sup>

### *Our view*

**We recommend that the Minister gives further consideration to estate management grounds for possession, in the light of the evidence we have received.**

### **Agreement to end the contract**

333. Shelter Cymru raised a technical point regarding section 152 which covers termination of the contract by agreement between the parties. The Bill does not include a requirement for that agreement to be in writing. Shelter Cymru recommended that there should be such a requirement.<sup>220</sup>

334. It also said it was unclear whether the Bill excluded surrender by operation of law, such as handing back the keys. Shelter Cymru believed it would be undesirable for the Bill to preclude this.<sup>221</sup>

### *Our view*

**We draw the Minister’s attention to the evidence from Shelter Cymru relating to section 152, termination by agreement, and the lack of requirement for a termination agreement to be in writing. We recommend that she gives further consideration to this section in light of the evidence.**

### **Other issues**

335. Shelter Cymru noted that section 214(9) governs the right of a contract-holder under a standard contract to apply for judicial review to the county court of a possession claim by a community landlord on an absolute ground. The Bill proposes to remove the right of a contract-holder to apply for judicial review after an order has been made.<sup>222</sup>

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<sup>219</sup> Written evidence, RH36

<sup>220</sup> Written evidence, RH18

<sup>221</sup> *ibid.*

<sup>222</sup> Written evidence, RH18

336. Shelter believed that this restricted the current position, whereby a tenant can apply to set aside a possession order and/or have a warrant suspended while a judicial review is made to the High Court.<sup>223</sup>

337. Shelter Cymru stated that it would be procedurally simpler for a contract-holder if an application for review could be made in conjunction with an application to set aside a possession order.<sup>224</sup> On this point, ARLA called for the Bill to clarify that private landlords would not be subject to a judicial review.<sup>225</sup>

### ***Our view***

**We draw the Minister's attention to the evidence from Shelter Cymru relating to section 214 (reviewing a claim). We recommend that she gives further consideration to this section in light of the evidence.**

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<sup>223</sup> *ibid.*

<sup>224</sup> *ibid.*

<sup>225</sup> Written evidence, RH13



## 10. Anti-social behaviour and other prohibited conduct

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338. Section 55 of the Bill provides that a contract-holder must not engage (or threaten to engage) in “conduct capable of causing nuisance or annoyance”. This is to be a fundamental term of all contracts. If breached, it will be for the courts to use its discretion whether to grant a possession order (sections 156 and 205). The courts may only make a possession order where it is reasonable to do so.

339. Alternatively, where the landlord is a community landlord, the contract could be replaced by a prohibited conduct standard contract.

340. Under the Bill, there will be no equivalent absolute ground for possession for anti-social behaviour, as is currently available to social landlords in existing legislation.

341. The definition of anti-social behaviour used in the Bill is relatively broad and includes not only the behaviour of the contract-holder, but also other occupiers and visitors.

### *Evidence from respondents*

342. Many respondents commented on the provision in section 55 relating to anti-social behaviour and prohibited conduct. Most of those respondents were supportive of the proposals in the Bill. On this point, the Law Society said:

“We believe that [section] 55 of the Bill provides the right degree of flexibility and breadth, by covering other people living in the premises, neighbours, those engaged in a lawful activity in the area and members of the landlord’s staff or contractors. It extends this responsibility to not only the contract holder but also to those who live with or visit them. We agree that this term must be incorporated into the standard contracts.”<sup>226</sup>

343. The Law Society noted that a breach of section 55 would require a landlord to apply to the courts for possession, and that this would be a discretionary ground for possession. It stated:

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<sup>226</sup> Written evidence, RH08

“(…) we do not believe that the loss of the absolute ground for possession will pose such a fundamental problem for landlords: the important point of principle for us is that the court’s discretion is maintained.”<sup>227</sup>

344. However some respondents, including MHA, took a different view. Highlighting one possession claim that had taken 18 months, MHA said that the absolute ground currently available does have a use. RESOLVE Anti-social Behaviour had a similar view, calling for the current absolute ground to be retained.

345. Linc Cymru said that its “greatest concern is the omission of the current position whereby the tenant (…) has responsibility for others”.<sup>228</sup> It argued that section 55 suggested that contract-holders would only be responsible for acts of anti-social behaviour carried out by others in which they (the contract-holder) had been complicit or involved. It said:

“This is a fundamental change from the current position and one that diminishes the tenant of responsibility and hinders our ability to deal effectively with serious and persistent ASB issues.”<sup>229</sup>

346. Similar points were made by MHA and RESOLVE Anti-social Behaviour, with RESOLVE Anti-social Behaviour saying that section 55(4), as currently drafted, “represents a significant and worrying diminution of the landlord’s ability to address anti-social behaviour and to protect victims adequately”. It recommended continuation of the current absolute ground for possession for anti-social behaviour.<sup>230</sup>

347. In relation to domestic abuse, some respondents, including Welsh Women’s Aid, called for this to be mentioned explicitly in this part of the Bill, and for that matter to be dealt with through guidance.

348. Welsh Women’s Aid went on to say that, “in certain situations the perpetrator [of domestic abuse] will not reside within the home, in which case the victim as the tenant may come under scrutiny for abusive or antisocial behaviour, which could conceivably put them at risk of losing their home”.<sup>231</sup>

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<sup>227</sup> Written evidence, RH08

<sup>228</sup> Written evidence, RH09

<sup>229</sup> *ibid.*

<sup>230</sup> Written evidence, RH14

<sup>231</sup> Written evidence, RH11

349. Welsh Women’s Aid also suggested that there was merit in a ‘homelessness duty’ to support perpetrators of domestic abuse who had been removed from a property.<sup>232</sup>

350. However, the Law Society did not believe that it was the responsibility of a landlord to become involved in domestic abuse situations, other than in exceptional cases. It stated that the proposals in the Bill effectively required the landlord’s “‘taking sides’ by exercising the power to exclude the person they believe to be the perpetrator”. It suggested that use of this power by landlords “could lead to challenges around whether a landlord is properly exercising their duties”.<sup>233</sup>

351. Although Shelter Cymru welcomed the broad approach taken in the prohibited conduct provisions, it was concerned that the Bill removed the current requirement for a landlord to produce evidence of a conviction in order to end a contract, saying:

“This is a considerable relaxation of the current criminal activity ground for possession.”<sup>234</sup>

352. Shelter Cymru argued that the prohibited conduct clause should be amended to reinstate the current requirement to evidence a criminal conviction<sup>235</sup>, as did Citizens Advice Cymru and Welsh Tenants.

353. Tai Pawb made a similar point, suggesting that the Bill be amended to provide for a requirement to demonstrate that harm had been caused to another person in order to protect tenants and prevent landlords from using the power for relatively minor nuisances or annoyances.<sup>236</sup>

354. It also told us that the proposed wording of section 55, ‘conduct capable of causing nuisance or annoyance’ was “very vague”. It said “it is key that abuse such as economic, psychological, emotional and other coercive behaviours are also covered by the terms ‘ASB and Prohibited Conduct’”.<sup>237</sup>

355. However, the Law Society made the point that not all anti-social behaviour was criminal. It told us:

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<sup>232</sup> Written evidence, RH11

<sup>233</sup> Written evidence, RH08

<sup>234</sup> Written evidence, RH18

<sup>235</sup> *ibid.*

<sup>236</sup> Written evidence, RH28

<sup>237</sup> *ibid.*

“Anti-social behaviour can come as noise nuisance. That’s not a criminal offence, unless there’s a breach of a noise abatement notice, and landlords need to be able to make communities sustainable and to be able to tackle anti-social behaviour, so I absolutely don’t agree that there must be a criminal conviction.”<sup>238</sup>

356. Disability Wales highlighted situations where a contract-holder with a disability or impairment could exhibit anti-social behaviour. It cited autism and Tourette’s as examples of conditions that could mistakenly give the impression that someone was intentionally engaging in anti-social behaviour.<sup>239</sup>

### ***Evidence from the Minister***

357. We asked the Minister what consideration she had given to making anti-social behaviour an absolute ground for possession, rather than discretionary. She told us:

“I think there are circumstances where the new mandatory ground may not be as effective as some believe, so even though it’s often called a ‘mandatory ground’, the defendant is always entitled to raise a defence under human rights law, arguing that eviction wouldn’t be proportionate, for instance. (...)”

“In cases of serious anti-social behaviour, a court would always make possession orders, in very, very exceptional circumstances, so I think it’s right to leave a court, again, to examine the facts and reach a decision accordingly.”<sup>240</sup>

358. We asked the Minister to outline how she considered the test provided for in section 55 (“conduct capable of causing nuisance or annoyance”) was proportionate under Article 8 of the Convention<sup>241</sup>.

359. In response, she told us:

“Sections 18 and 20 provide that anti-social behaviour and other prohibited conduct is to be incorporated as a fundamental term of each occupation contract, not simply a ground for possession. However, to the extent breach of the term gives rise to a ground for

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<sup>238</sup> RoP, para 153, 30 April 2015

<sup>239</sup> Written evidence, RH03

<sup>240</sup> RoP, para 306, 22 April 2015

<sup>241</sup> Article 8 of the European Convention on Human Rights provides a right to respect for private life, family life and the home

possession, it is a discretionary one. The ground is also subject to structured discretion. This means, in determining whether or not to grant a possession order, the courts have to consider the general public interest in restraining the prohibited conduct (section 205 and paragraph 11 of Schedule 9 refer).

“The provision seeks to balance the rights of the contract-holder with the rights of other residents or persons going about lawful activity in the locality of the dwelling. It pursues a legitimate aim, which is to avoid anti-social behaviour causing nuisance or annoyance to others. Furthermore, ‘nuisance or annoyance’ is the current definition housing-related anti-social behaviour, for example Ground 14 in Schedule 2 of the Housing Act 1988 and section 2 of the Anti-Social Behaviour, Crime and Policing Act 2014.”<sup>242</sup>

360. We asked the Minister why the Bill did not refer specifically to domestic abuse. On this point, she said:

“Section 55 of the Bill defines ‘prohibited conduct’ as behaviour capable of causing nuisance and annoyance, and I cannot think of any form of domestic abuse that wouldn’t be classed as nuisance or annoyance. I think if we did have a separate definition for domestic abuse, then that would run the risk of creating a higher threshold for proving that domestic abuse, more than another form of prohibited conduct.”<sup>243</sup>

361. She confirmed that guidance on this section would clarify that domestic abuse was intended to be covered by the prohibited conduct provision.<sup>244</sup>

### ***Our view***

362. We are concerned that the test of “conduct capable of causing nuisance or annoyance”, provided for in section 55 of the Bill, appears to set a very low threshold for a possession order. The courts’ discretion may not be enough to prevent some landlords from engaging in bullying behaviour by threatening contract-holders with possession on this basis for very minimal levels of nuisance or annoyance.

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<sup>242</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

<sup>243</sup> RoP, para 317, 22 April 2015

<sup>244</sup> *ibid.*

363. While we note the Minister's evidence in relation to the proportionality of the test under Article 8, we nevertheless believe she should give further consideration to the threshold for a possession order under section 55.

364. We are not convinced that section 55 would always cover domestic abuse, as the perpetrator's partner may not necessarily fall into the definition in section 55(1) of a person with a right to live in the dwelling or in the locality of the dwelling. We believe the Minister should consider an appropriate amendment to section 55.

**We recommend that the Minister considers amending section 55 of the Bill to ensure that it applies to the partner of a contract-holder, where that contract-holder is a perpetrator of domestic abuse and the partner does not live in the dwelling or in the locality of the dwelling.**

## 11. Condition of the dwelling

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### Fitness for human habitation

#### *Background*

365. Section 91 of the Bill places an obligation on landlords to ensure the condition of the dwelling is “fit for human habitation”. It applies to all secure contracts, periodic standard contracts and all fixed term standard contracts made for a term of less than seven years.

366. The Welsh Government’s original intention was to have a standard term in occupation contracts that prohibited the existence of a Category One hazard, as identified under a Housing Health and Safety Rating System (HHSRS) assessment. This was not taken forward because of concerns about the potential burden on local authorities of undertaking those assessments.

367. As an alternative, the Bill requires landlords to ensure that a property is fit for human habitation. At present, the only statutory requirement for a dwelling to be fit for human habitation is in the Landlord and Tenant Act 1985 (“the 1985 Act”). The provisions in the 1985 Act only apply to dwellings at a very low rent, currently under £52 a year, which effectively means it applies to almost no tenancies.

368. The Bill will extend that requirement and modernise the law. In particular, section 94 enables the Welsh Ministers to make regulations that specify standards that must be met under the Bill, and these may make reference to the HHSRS.

#### *Evidence from respondents*

369. There were contrasting views on the provisions relating to fitness for human habitation. Landlord representatives suggested that there was potential for the sector to experience increased costs as properties are brought up to the standard prescribed in regulations, while others thought it was a “missed opportunity in terms of raising standards”<sup>245</sup>. There were also calls for greater clarity around what was meant by “fit for human habitation”.

370. The HLPAs welcomed the proposed obligation on landlords to ensure the condition of dwelling is fit for human habitation as a “considerable improvement” on the 1985 Act. It saw “no basis at all for suggesting that a landlord should be able to let a property which is not fit for human

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<sup>245</sup> RoP, 30 April 2015, para 200

habitation (especially where public money is paid to that landlord, e.g. by way of housing benefit).<sup>246</sup>

371. Welsh Tenants were disappointed not to see a prohibition on renting a property with a category 1 hazard (under HHSRS). It suggested that the Bill should place a duty on landlords to inform potential contract-holders of any hazards present in the dwelling.<sup>247</sup>

372. In commenting on the proposed obligation on landlords to ensure the condition of dwelling is fit for human habitation, the NLA stated that it “does not think this provision to be either unreasonable or overly burdensome to landlords”.<sup>248</sup>

373. In contrast, the RLA raised concerns that the concept of fitness for human habitation was being “resurrected” without having any evidence base on current stock conditions in the PRS. It called for the obligation on landlords to only apply to new lettings; focus entirely on health and safety (not the comfort of occupiers); not extend over all 29 hazards; take into account the age and character of the dwelling; and exclude energy efficiency as this would be addressed by UK regulations. The RLA estimated that the proposal would cost landlords between £500 million and £750 million.<sup>249</sup> Further, it suggested that guidance was needed to make the HHSRS more usable for landlords and tenants to understand.

374. There was some concern from the RLA and the Guild of Residential Landlords about the use of regulations to determine what was fit for human habitation and, in particular, whether this could give rise to litigation and potential duplication of the HHSRS. It was suggested that it would be “far better” if the fit for human habitation requirements were included on the face of the Bill so that landlords were aware of what was expected of them.<sup>250</sup>

375. While the HLPAs acknowledged the regulation making powers in the Bill, it suggested that provision should be made for a “default” position, similar to that provided for in section 10 of the 1985 Act, which would have effect in the event that regulations were not made.<sup>251</sup>

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<sup>246</sup> RoP, para 104, 20 May 2015

<sup>247</sup> Written evidence, RH36

<sup>248</sup> Written evidence, RH25

<sup>249</sup> Written evidence, RH29

<sup>250</sup> RoP, para 243, 14 May 2015

<sup>251</sup> Written evidence, RH41



376. The Guild of Residential Landlords called for the regulations to be “carefully thought out” and not use terms such as “reasonable” to avoid subjectivity.<sup>252</sup>

377. NUS Cymru was concerned that there was no duty on local authorities to carry out inspections on properties and urged the Welsh Government to consider the feasibility of a complaint function within the office of the Public Services Ombudsman, or a new body.<sup>253</sup>

### ***Evidence from the Minister***

378. We asked the Minister if she considered “fit for human habitation” to be ambitious enough to raise housing quality standards in Wales. She told us that she believed it was ambitious enough and that fitness for human habitation would improve as a result.<sup>254</sup>

379. She also said that it would be easier for contract-holders to demonstrate that their property was not fit for human habitation, without having to wait for an environmental health inspection.<sup>255</sup>

380. She went on to say that it would be too costly to impose quality standards on the private sector at the current time, but agreed to consult on the regulations to determine what was fit for human habitation.<sup>256</sup>

### ***Our view***

381. We note the Welsh Government’s commitment to improving the condition of rental properties, and the health and well-being of those who live in them. While we support this, we do not believe that the fitness for human habitation test provided for in the Bill is sufficient to raise the standard of accommodation in the rental sector in a meaningful way.

382. We note that the Minister proposes the criteria for the test will be based on the hazard criteria under the HHSRS. We do not believe this is sufficiently ambitious. It is unclear exactly what standard “fit for human habitation” will actually be until, and unless, regulations are made.

383. In contrast, in 2006, the Scottish Government introduced provisions requiring landlords to keep in repair their fixtures and fittings, furniture, and

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<sup>252</sup> Written evidence, RH26

<sup>253</sup> Written evidence, RH39

<sup>254</sup> RoP, para 394, 20 May 2015

<sup>255</sup> *ibid.*

<sup>256</sup> *ibid.*

white goods and to ensure the property is wind and watertight. We believe that a similar requirement in Wales would represent a clear commitment by the Welsh Government to high quality rented housing.

**We recommend that the Minister reconsiders the criteria to be used for the “fitness for human habitation” test for the purpose of setting a more ambitious test. Such criteria could be based on the Repairing Standard provisions contained in the Housing (Scotland) Act 2006.**

384. Furthermore, we believe that the terminology used in the Bill reflects this lack of ambition, and implies that requirements will be minimal.

**We recommend that the Minister reconsiders the use of the term “fitness for human habitation” and amends the Bill accordingly.**

385. We note that section 94 of the Bill enables the Minister to make regulations for the purposes of determining whether a property is fit for human habitation. We are concerned that no clear commitment to make such regulations has been given by the Minister. We believe the Bill would be strengthened if this were to be a requirement on the Minister, rather than simply an enabling provision.

**We recommend the Minister amends the Bill so as to require Welsh Ministers to make regulations for the purpose of determining whether a dwelling is fit for habitation.**

**We recommend that these regulations are subject to the affirmative procedure.**

## **Gas and electrical safety**

### ***Background***

386. Under current legislation, landlords are responsible for ensuring that gas installations and appliances in their rental properties are checked on an annual basis. There are no equivalent requirements for electrical installations and appliances.

### ***Evidence from Respondents***

387. Electrical Safety First called for the Bill to be amended to include provision for periodic inspections (every 5 years) of electrical installations to be made mandatory. It also recommended Portable Appliance Testing (PAT) of electrical appliances and Residual Current Devices (RCDs) to be fitted to

consumer units. The installation of RCDs is already mandatory in new-build properties or dwellings that have been rewired.<sup>257</sup>

388. While the RLA supported the requirement for Houses in Multiple Occupation (HMOs) to have electrical safety checks every five years, it did not believe this was appropriate for non-HMO properties:

“We believe however, for owner-occupied properties, non-HMO properties should have checks of the installed wiring within them every five to ten years, on the recommendation of a registered electrician.”<sup>258</sup>

389. North Wales Fire and Rescue Service supported the views of Electrical Safety First, and also recommended the mandatory installation of carbon monoxide detectors and smoke alarms in rental properties.<sup>259</sup> Shelter Cymru and British Gas also supported those requirements.<sup>260</sup>

### ***Evidence from the Minister***

390. The Minister agreed to give further consideration to introducing a requirement for periodic electrical safety checks and the provision of smoke and carbon monoxide detectors in all rental properties.

### ***Our view***

**We agree with respondents that the Bill should make provision for the installation of carbon monoxide detectors and smoke alarms, and the periodic inspection of electrical installations to be mandatory in rental properties. We recommend that the Minister amends the Bill accordingly.**

391. We believe that the Minister should consider a requirement for such alarms and detectors to be hard wired, although we accept that this may present some practical difficulties, particularly in older properties.

## **Landlord’s obligation to keep dwelling in repair**

### ***Background***

392. Section 92 of the Bill places a general obligation on landlords to keep the dwelling in repair. It is largely a restatement of section 11 of the Landlord and Tenant Act 1985, which applies at present.

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<sup>257</sup> Written evidence, RH06

<sup>258</sup> Written evidence, RH29

<sup>259</sup> Written evidence, RH12

<sup>260</sup> Written evidence, RH18

393. Sections 95 to 97 of the Bill provide various limits on the obligations on landlords to keep the dwelling fit for human habitation and in repair. The obligation to make the property fit for human habitation does not apply where the landlord could not meet this obligation without incurring “unreasonable expense” (section 95). In addition, a landlord would not be obliged to carry out work to the property if it is unfit for habitation because of an act or omission by the contract-holder or other occupier (section 96).

394. Section 98 enables a landlord to enter the premises at any reasonable time to inspect the property or carry out maintenance or repairs, but is required to give the contract-holder 24 hours’ notice. The landlord will not be liable for repairs in any part of the building to which, after making reasonable effort, they cannot gain access.

### ***Evidence from respondents***

395. A number of respondents commented on the arrangements for landlords to access dwellings for inspections and to carry out repairs. Tai Pawb said there was no provision in the Bill to ensure that attempts to gain access were reasonable. It highlighted, as an example, a situation where a contract-holder might want a carer to be present and suggested that the Bill would be strengthened by referencing the Equality Act.<sup>261</sup>

396. Llamau suggested that there should be “some element of reciprocation with the contract-holder” to confirm that the landlord could access the property.<sup>262</sup>

397. ARLA highlighted problems that could arise when there were common parts of a building which needed repaired, but the landlord did not own or have access to them. It felt that specific reference should be made to both the potential refusal by the freeholder to allow the landlord to make such repairs and the time it can take to gain permission to make repairs or improve the common parts of properties.<sup>263</sup> MHA suggested there should be provision for immediate access in an emergency.<sup>264</sup>

398. Citizens Advice Cymru believed that a landlord should still be under an obligation to carry out repairs, even where the need for repair had been caused by the behaviour of the contract-holder. It suggested that section 96 was inconsistent with other legislation regarding the duty of a landlord to

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<sup>261</sup> Written evidence, RH28

<sup>262</sup> Written evidence, RH27

<sup>263</sup> Written evidence, RH13

<sup>264</sup> Written evidence, RH30

undertake repairs and carry out maintenance and could cause confusion about landlords' responsibilities. Currently, where repairs were necessary because of tenants' inaction, landlords could seek deductions from the tenants' deposit, but were not excused from their duty to make repairs (as proposed in the Bill).<sup>265</sup>

399. Welsh Tenants were concerned that landlords were only obliged to carry out repairs that were reasonable having regard to the age and character of the dwelling.<sup>266</sup> It also felt, along with British Gas<sup>267</sup> and NUS Cymru<sup>268</sup>, that there should be agreed timescales for carrying out repairs.

400. NUS Cymru sought clarity as to what would constitute "reasonable effort" in relation to a landlord no longer being liable for repairs if they could not gain access after making "reasonable effort".<sup>269</sup>

401. The Law Society recommended that there should be detailed guidance on the application of section 95 when the obligation on the landlord to make the property fit for human habitation would not apply on the grounds of "unreasonable expense". The HLPAs went further and suggested including a duty in the Bill for the Minister to issue and update guidance on this issue.<sup>270</sup>

### ***Enforcement***

402. A number of respondents, including Citizens Advice Cymru<sup>271</sup> and Shelter Cymru,<sup>272</sup> called for stronger links between the Bill and Part 1 of the Housing (Wales) Act 2014. They wanted to see breaches of contract by landlords recorded against their licence, with serious or repeat breaches leading to revocation of the licence.

403. The Law Society agreed, saying that "for any minimum criteria to have the desired impact of improving the overall condition of rented properties there would have to be enforceable penalties for those landlords who were in breach".<sup>273</sup>

404. The RLA strongly believed that the best way to improve the PRS was to have better enforcement, rather than establishing more legislation. It told us:

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<sup>265</sup> Written evidence, RH33

<sup>266</sup> Written evidence, RH36

<sup>267</sup> Written evidence, RH04

<sup>268</sup> Written evidence, RH39

<sup>269</sup> Written evidence, RH39

<sup>270</sup> Rop, para 93, 20 May 2015

<sup>271</sup> Written evidence, RH33

<sup>272</sup> Written evidence, RH18

<sup>273</sup> Written evidence, RH08a

“Many of the problems associated with the PRS occur with criminal landlords, who exploit current regulations to the [detriment] of tenants. Criminal landlords are not criminals because they do not know or understand the law, they are criminals because they choose not to follow it, knowing that the rules won’t be enforced on them.

“No amount of extra legislation will change this fact, only enforcement of the rules and regulations that every other landlord strives to uphold. Increasing the levels of regulation will not bring criminal landlords up to standard. Instead it will simply demotivate those landlords who have always strived to do things ‘by the book’.”<sup>274</sup>

### ***The Evidence from the Minister***

405. The Minister agreed to give consideration to the introduction of timescales for carrying out repairs, as part of the Private Rented Sector Code of Practice for Landlords and Agents.<sup>275</sup>

### ***Our view***

406. We feel that the Bill is lacking in ambition, as it simply restates the current position with regard to landlords’ obligations to keep their dwellings in repair, rather than seeking to improve upon it.

407. We agree with witnesses that enforcement is a problem. As a result of resource pressures facing local authorities, the onus is on the contract-holder to take their landlord to court and, given that legal aid is only available in the most serious cases of disrepair, many are deterred from pursuing this course of action.

408. We believe that stronger links are needed between the Bill and Part 1 of the Housing (Wales) Act 2014. Further, we believe there should be enforceable penalties for those landlords who are in breach of contract, with serious or repeat breaches leading to revocation of the landlord’s licence. There should also be clear timescales for carrying out repairs.

**We recommend that the Minister makes provision for penalties to be issued against landlords who are in breach of contract, with serious or repeated breaches leading to revocation of the landlord’s licence under the Housing (Wales) Act 2014.**

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<sup>274</sup> Written evidence, RH29b

<sup>275</sup> RoP, para 294, 22 April 2015

**Further, we recommend that the Minister makes appropriate provision for clear timescales within which landlords must carry out repairs.**

409. In our view, there is a role for the RPT Wales to adjudicate over disputes relating to repairs and building conditions. We have made a number of recommendations in this regard in Chapter 13 – Use of the Courts.

## 12. Abandonment

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### *Background*

410. The current law does not provide for a specific procedure that a landlord can use to recover possession of a dwelling they believe to have been abandoned. In the absence of any such procedure, some landlords have sought possession orders from the courts, or have simply taken possession of the premises, thereby risking accusations of unlawful eviction and a potential claim for compensation or criminal prosecution.

411. The Bill proposes a new process to recover possession of premises without the need for a court order and without the risk of repercussions for the landlord.

412. Sections 216 to 220 make provision about abandonment, including requiring the landlord to provide the contract-holder with a notice stating that they believe the dwelling has been abandoned and that they intend to end the contract on that basis. The notice must require the contract-holder to inform the landlord in writing before the end of a 'warning period' (four weeks) if they have not abandoned the dwelling. The landlord must make enquiries during the warning period to satisfy themselves that the contract-holder has abandoned the dwelling. At the end of the warning period, the landlord may end the contract by giving another notice to the contract-holder.

413. A contract-holder will have a period of six months during which to challenge a landlord's use of the abandonment procedure. The challenge can only be made on specific grounds. If the courts accept any of the grounds have been proved by the contract-holder, it can reinstate the contract, require the landlord to provide suitable alternative accommodation or make any other order it sees fit.

### *Evidence from respondents*

414. The majority of respondents who commented supported the principle behind the abandonment provisions in the Bill of clarifying and simplifying the current procedures for landlords to recover possession of their properties where they believe them to have been abandoned.

415. The Law Society supported the proposal enabling landlords to recover possession of a property without a court order (subject to making the necessary enquiries). It saw the provisions as a means of both recovering



possession and limiting rent arrears, subject to appropriate safeguards to prevent wrongful eviction. It suggested that standard and secure contracts should contain a term requiring the contract-holder to notify the landlord if they intended to be absent from the property for longer than one month.<sup>276</sup>

416. In contrast, Welsh Tenants told us that “as a general principle we do not support eviction of someone’s home without recourse to the courts and judicial oversight”. It continued:

“Our concern is that there are many circumstances where ‘perceived abandonment’ could be used by the landlord, where a person may be held on remand while criminal conviction is being sought, but may prove to be ultimately innocent or where the CPS drops charges. Or when a person has a long stay in hospital, has no friends or relatives or spends extended periods abroad. Or indeed, where their work has taken them abroad, armed forces or extended work contracts. In such circumstances it may not always be possible to inform the landlord in advance or have the ability to defend against landlords’ actions.”<sup>277</sup>

417. It went on to say:

“There is no amount of guidance that can be developed to compensate for the use of judicial discretion; this should always be sought on matters of tenure security and is a fundamental principle in human rights conventions.”<sup>278</sup>

418. Welsh Tenants’ concerns about the effect of the abandonment provisions on vulnerable contract-holders were echoed by a number of other respondents including the Law Society, Shelter Cymru, Tai Pawb and Citizens Advice Cymru. Both the Law Society and Shelter Cymru were of the view that the Bill did not contain sufficient safeguards to ensure that these provisions were not mis-used and vulnerable contract-holders exploited.<sup>279</sup>

419. Further to this, Tai Pawb told us that the provisions relating to abandonment “would be strengthened by referencing the Equality Act, the Human Rights Act, and also specifically matters arising from disability”.<sup>280</sup>

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<sup>276</sup> Written evidence, RH08

<sup>277</sup> Written evidence, RH08a

<sup>278</sup> *ibid.*

<sup>279</sup> Written evidence, RH08, RoP, para 161, 30 April 2015, written evidence RH18

<sup>280</sup> Written evidence, RH28a

420. More generally, Justin Bates from the HLPAs questioned what problem in law this part of the Bill was trying to address. He argued that, where a contract-holder was paying rent but wished to leave the property empty for a period of time, they should be entitled to do so. In cases where the property was unoccupied and rent arrears were building up, he said that the landlord already had grounds for possession.<sup>281</sup>

421. In addition, he said he was unclear about the inquiries that would need to be undertaken by landlords during the warning period to satisfy themselves that a property had been abandoned. He suggested that landlords at the bottom end of the housing market might see the Bill as an opportunity to evict contract-holders more easily, and that litigation would be invited “because the key fight will be around: did they [landlords] take the reasonable steps [to satisfy themselves that the property had been abandoned]?”<sup>282</sup>

422. Similarly, a number of other respondents, including the NLA, Swansea Council, the Law Society and Tai Pawb, said they were unclear about the enquiries that would need to be made by landlords, and called for further clarity and guidance from the Minister on this matter.<sup>283</sup>

423. MHA suggested that the Bill should clearly state that a landlord cannot be prosecuted for illegal eviction where that landlord had followed the correct procedure. It also called for clarification of a landlord’s responsibilities in cases where the contract-holder’s belongings had been left in the property after it had been abandoned.<sup>284</sup>

424. In addition to the above, some respondents commented specifically on the length of the warning period and the length of the period available to the contract-holder to appeal against the landlord’s action to recover possession.

425. Both Shelter Cymru and Citizens Advice Cymru told us that the proposed warning period (four weeks) could be less than many contract-holders’ rental periods (likely to be monthly) and called for this to be

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<sup>281</sup> RoP, para 129, 20 May 2015

<sup>282</sup> RoP, para 130, 20 May 2015

<sup>283</sup> Written evidence, RH25, RH01, RH08, RH28

<sup>284</sup> Written evidence, RH30

extended to eight weeks.<sup>285</sup> Tai Pawb agreed that the proposed four-week period was not long enough.<sup>286</sup>

426. In relation to the proposed six-month appeal period, several respondents felt this was too long. The National Trust believed that it could “inhibit the ability of the landlord to re-let the property and thereby put it back into use.”<sup>287</sup> The Law Society suggested reducing this appeal period from six months to three months,<sup>288</sup> and ARLA suggested reducing the timeframe to eight weeks.<sup>289</sup>

427. Finally, a number of respondents discussed what might happen if a property was found not to have been abandoned following repossession. On this point, ARLA argued that, in cases where the courts had ordered a landlord to provide a contract-holder with alternative accommodation where that contract-holder had been found not to have abandoned the property, that accommodation should need only be of similar size and rental value to the property which was thought to have been abandoned.<sup>290</sup>

### ***Evidence from the Minister***

428. The Minister confirmed that the purpose of the abandonment provisions was to “[make] sure that if a property has been abandoned, the landlord can deal with it more quickly than currently and is able then to re-let the property.”<sup>291</sup>

429. As the provisions proposed in the Bill allow for recovery of possession without a court order, we asked the Minister to set out her intentions in relation to the provisions of the Protection from Eviction Act 1977. She confirmed that the Act was not to be repealed, but that some provisions would require amendment as a consequence of the Bill. She did not specify the provisions to be amended. She went on to say:

“A contract-holder who has abandoned the property will not be “evicted”. He or she will, of their own choice, have surrendered the contract. The abandonment provisions are not there to ensure eviction, but rather to enable landlords to obtain “possession” of

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<sup>285</sup> Written evidence, RH18, RH33 and RoP, paras 667-669, 14 May 2015

<sup>286</sup> Written evidence, RH28

<sup>287</sup> Written evidence, RH16

<sup>288</sup> Written evidence, RH08

<sup>289</sup> Written evidence, RH13

<sup>290</sup> Written evidence, RH13

<sup>291</sup> RoP, para 328, 22 April 2015

properties, where the contract-holder has already left, subject to the landlord meeting the procedural requirements set out in the Bill.”<sup>292</sup>

430. Responding to concerns about the potential for vulnerable contract-holders to be adversely affected by these provisions, the Minister said:

“We’ve set out very clearly that the landlord has to make enquiries as to what’s necessary to be satisfied a contract-holder has abandoned a dwelling. (...) we’ll have to lay out very clearly to landlords what sort of inquiries they need to be making to ensure that a property has been abandoned.”<sup>293</sup>

431. She confirmed that she would issue guidance on this last point.<sup>294</sup>

432. She went on to say that “further safeguards” had been built into the Bill in the form of the four-week warning period and the six-month period of challenge.<sup>295</sup>

433. The Minister also told us that, in relation to the length of the warning period, she was looking at best practice elsewhere, citing the experience in Scotland where, she said, a similar four-week warning period had been operating well for around 10 years.<sup>296</sup>

434. Finally, in relation to the six-month challenge period, we asked the Minister to clarify what would happen in cases where a landlord had only one property, so did not have an alternative property to offer to a contract-holder where the courts had accepted that contract-holder’s challenge. Responding to this, the Minister’s senior lawyer stated:

“The expectation is that normally this would be used within the social sector and in conjunction with secure contracts, but on the basis that the Bill is now landlord neutral and a private landlord would want to exercise this right, there is provision in the Bill for the court to make such order as it thinks fit. So, for example, it could be a monetary compensation payment that the court decided to order.”<sup>297</sup>

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<sup>292</sup> Letter from the Minister for Communities and Tackling Poverty, 14 May 2015

<sup>293</sup> RoP, para 467, 20 May 2015

<sup>294</sup> RoP, para 332, 22 April 2015

<sup>295</sup> RoP, paras 327-328, 22 April 2015

<sup>296</sup> RoP, para 467, 20 May 2015

<sup>297</sup> RoP, para 330, 22 April 2015

## *Our view*

435. We note that the abandonment process provided for in the Bill allows for recovery of possession by a landlord without a court order. As such, it appears to us that some repeals and amendments to the Protection from Eviction Act 1977 will be necessary.

436. In addition, provisions in the Housing Act 1988 which provide for additional penalties for unlawful eviction for financial gain are not replicated in the Bill. The Minister has informed us that these provisions are not to be repealed and they will continue to be the main means for dealing with unlawful eviction.

437. On this basis, we are concerned that the Bill weakens the protection offered to contract-holders faced with unlawful eviction. This also appears to run counter to the Minister's evidence that this Bill will simplify the law because key provisions will remain in other pieces of legislation.

438. We are concerned that the abandonment procedures, as drafted, may be open to abuse by unscrupulous landlords. We consider that statutory guidance is needed for landlords and that failure to follow the abandonment procedure should constitute an unlawful eviction.

**We recommend that the Minister amends the Bill to make provision that failure by a landlord to follow the correct abandonment procedure should constitute an unlawful eviction.**

**We recommend that the Minister issues guidance to landlords on the use of the abandonment procedure.**

439. More generally, we agree with the principle that a contract-holder who pays their rent in a timely manner but chooses not to occupy the property for periods of time should not face a possession claim from the landlord. In the case of rent arrears as a result of abandonment, the Bill makes other provision for the possession of the property by the landlord. We believe that a landlord should not be able to make use of the abandonment procedure unless the contract-holder is in serious rent arrears.

**We recommend that the Minister amends the Bill so that landlords can only seek possession for abandonment where the serious rent arrears ground for possession, under sections 179(2) and 184(2), has been made out.**

## 13. Use of the courts

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### *Background*

440. The Bill uses the county court (or High Court) for a number of purposes. In addition to dealing with possession claims, it is for the courts to decide certain disputes, including those relating to:

- written statements;
- deposits;
- where the landlord is required to provide their consent.

441. No use is made of the RPT Wales, which is a specialist tribunal established to deal with housing disputes. Moreover, the Bill appears to remove a large number of core roles from the RPT Wales which exist under the Housing Act 1988. These include dealing with rent increases and variations to tenancies, currently dealt with by sections 13 and 6 of the Housing Act 1988 respectively. This affects tenants of housing associations and also private landlords.

442. The Regulatory Impact Assessment (RIA) states that although it has not been possible to “estimate the precise impacts” on the courts, the overall conclusion is that it will be cost neutral. The RIA does however acknowledge that claims as a result of the Bill “may require some adjustments to the process and systems for considering cases, which may or may not incur additional costs”. The RIA goes on to state that the Welsh Government expects the Bill to reduce the number of cases that reach the courts because of “a lack of understanding or confusion on the rights and obligations of landlords and tenants”.

### *Evidence from respondents*

#### **Reliance on the courts**

443. Many respondents were concerned about the reliance the Bill places on the courts to decide disputes, and a number proposed alternative bodies and processes to settle disputes that arise under the Bill.

444. The HLPAs said they thought the Bill as a whole put too much emphasis on contract-holders having to vindicate their rights by applying to the courts to get a declaration. They suggested that this would put contract-holders who could not afford to engage legal representation at a disadvantage

because landlords would find the money to defend such actions.<sup>298</sup> Welsh Tenants also raised this point, saying that tenants had told them that, having to seek recourse through the courts would mean that “only the most educated consumer would use the courts to enforce their rights or defend against the landlord’s actions”.<sup>299</sup>

445. Llamau called for legal remedies to be available and “easily accessible by all”, but said that going to court was off-putting to many people. It suggested an ombudsman or arbitration service as an alternative.<sup>300</sup> Tai Pawb felt that recourse to the courts was not the most beneficial way to enter into dispute resolution, and suggested mediation as an alternative.<sup>301</sup>

446. ARLA stated that the current County Court process for possession proceedings was inefficient and failed to adequately serve either landlords or tenants. It said that, as County Court Judges adjudicated across the whole span of civil law cases, this prevented them from being specialists in any one field and, as such, were not always up-to-date on the most recent changes to the law and new precedents.<sup>302</sup>

447. It believed that creating a specialist Housing Court (which it suggested could sit in the County Court one day per week to hear landlord and tenant law claims, including possession proceedings) or moving such cases to the RPT Wales would overcome this problem, as judges would be appointed for their knowledge and expertise in the field. ARLA believed this would both expedite cases and also improve consistency in judgments across the Welsh Courts.<sup>303</sup>

### **Mediation and alternative dispute resolution**

448. Shelter Cymru called for the Welsh Government to investigate the feasibility of establishing a specialist tribunal for resolving housing related disputes.<sup>304</sup> Citizens Advice Cymru went further and called for fixed penalty notices as provided for under the Housing (Wales) Act 2014, specifically for where a landlord fails to provide a written occupation contract, provide information on deposit schemes and ensure the property’s fitness for human habitation.<sup>305</sup> Let Down in Wales said it would prefer a dedicated and

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<sup>298</sup> Written evidence, RH41

<sup>299</sup> Written evidence, RH36a

<sup>300</sup> Written evidence, RH27

<sup>301</sup> Written evidence, RH28

<sup>302</sup> Written evidence, RH13a

<sup>303</sup> *ibid.*

<sup>304</sup> Written evidence, RH18

<sup>305</sup> Written evidence, RH33

resourced body to provide advice, legal assistance and information for tenants, such as England’s Housing Ombudsman or the Housing Tribunal in Scotland.<sup>306</sup>

449. Welsh Tenants believed that the majority of cases could be resolved (with advocacy support) through dialogue and discussion. However, this would involve better education regarding rights and obligations for both landlords and contract-holders, as well as a co-ordinated national approach to tenant support.<sup>307</sup>

450. Citizens Advice Cymru suggested that the RPT Wales could be a suitable body to progress mediation services<sup>308</sup>, a point also made by Welsh Tenants.<sup>309</sup>

451. The RPT Wales confirmed that it did not currently provide alternative dispute resolution but would be happy to expand its role. It stated:

“(...) we find that, with a lot of disputes that come to us (...) a lot of the issues arise out of the lack of transparency as to what’s going on, and it’s when the cards are put on the table—and you can do that in a mediation process—that, all of a sudden, a lot of the issues go away.”<sup>310</sup>

### **Role of the Residential Property Tribunal Wales**

452. A number of witnesses suggested that the RPT Wales should have jurisdiction over a number of areas in the Bill, other than those relating to possession claims.

453. The RPT Wales told us that, while the Tribunal would not currently have the capacity to take on, nor would it wish to become engaged in, possession claims, there were areas where it could have a role, such as fit-for-human-habitation issues, disputed succession rights, and failure to supply a contract.<sup>311</sup>

454. The Law Society, however, suggested that there might be unintended consequences if possession claims were to remain in the courts and other disputes transferred to the RPT Wales. By way of example, it asked whether,

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<sup>306</sup> Written evidence, RH05

<sup>307</sup> Written evidence, RH36a

<sup>308</sup> Written evidence, RH33

<sup>309</sup> Written evidence, RH36

<sup>310</sup> RoP, para 326, 6 May 2015

<sup>311</sup> RoP, para 309, 6 May 2015



in the event of disrepair being raised as a defence to a possession claim, a contract-holder would be better to wait until the landlord sought possession of the property and then bring disrepair as a defence in a court where they might be entitled to legal representation.

455. It went on to say that if, for example, all private sector disrepair disputes were transferred from the courts to the RPT Wales, it would be likely that the contract-holder would be representing themselves; legal aid would not be available and their ability to obtain legal representation might be impeded further as costs were not recoverable in the RPT Wales. Disrepair claims required a surveyor's report and it would be left to the contract holder to present that expert evidence to a tribunal panel.<sup>312</sup>

456. On this point, the RPT Wales told us that the Tribunal had many years' experience of dealing with unrepresented applicants—both landlords and tenants. He said that Tribunal members were “very good at teasing out what the issues are, not acting as a tenant’s advocate, as such, but making sure that both sides of the argument are heard and the issues are aired”.<sup>313</sup>

### ***Evidence from the Minister***

457. We asked the Minister why the Bill did not confer powers on the RPT Wales. She told us that she did not believe the Tribunal had sufficient capacity and she was not convinced that expanding its role, in its current form, would achieve the Bill’s objectives.<sup>314</sup>

458. She went on to say that, while she thought mediation was a way forward, it would not necessarily be matter for the RPT Wales solely, as there were other bodies that could provide such services.<sup>315</sup>

459. The Minister’s Bill manager confirmed that, although there were advantages in moving to a more specialised housing court, it was not intended that this would form part of the Bill.<sup>316</sup>

### ***Our view***

460. It is our view that the Bill places too much reliance on the courts to resolve disputes. We believe that going to court should not be the only option for contract-holders or landlords wishing to enforce their rights,

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<sup>312</sup> Written evidence, RH08a

<sup>313</sup> RoP, para 331, 6 May 2015

<sup>314</sup> RoP, para 480, 20 May 2015

<sup>315</sup> RoP, para 486, 20 May 2015

<sup>316</sup> RoP, para 500, 20 May 2015

particularly given the limitations on legal aid and the intimidating nature of court proceedings.

461. We are concerned that there has been no evidence presented that the courts will have the capacity to deal with the additional cases created as a result of this Bill, nor does there appear to have been consideration as to how many such cases might occur.

462. There is already a body operating in Wales, whose role includes resolving disputes over rent, licensing and the condition of property. As such, it seems counter-intuitive to remove a number of its core functions, particularly when it is able, and willing, to provide a service that would be more accessible and expedient, and less costly than court proceedings. That body has been conferred new powers and obligations under the terms of the Housing (Wales) Act 2014 and will presumably require training and expansion to deal with those obligations. We do not see that a further modest increase from this Bill will add unduly to that burden.

463. We note that there are arrangements in place elsewhere in the UK, including Scotland and Northern Ireland, for specialist housing tribunals or panels to oversee housing-related disputes across all sectors. We agree with witnesses that there is considerable merit in pursuing this option for Wales. Additionally, we consider that an expert tribunal with strict costs limits, like the RPT Wales, will provide a better environment for contract-holders to deal with cases themselves as they will be able to rely on the tribunal's own expertise in making a range of decisions.

**We recommend that the Minister amends the Bill to make provision for adjudication over disputes in relation to rent increases, fitness for human habitation issues, succession rights, failure to supply a contract and alternative dispute resolution/mediation services. We believe the most effective way of doing this would be to expand the current role of the RPT Wales.**

464. We recognise that there will be cost implications associated with this recommendation and that the Minister will need to undertake further cost analysis in this area.

## 14. Costs

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### *Background*

465. The full cost analysis of the Bill is set out in Part 2 of the Explanatory Memorandum. In preparing the RIA the Welsh Government acknowledged that the Bill, once enacted and commenced, would have a financial impact, to varying degrees, on landlords (private and community), third sector organisations, the legal profession, tenants, and the Welsh Government itself.

466. The Minister estimates that the total cost to the Welsh Government in the first year of commencement (2016/17) would be £473,000; for the following three years the costs would reduce to figures in excess of £200,000 each year.<sup>317</sup>

467. With regard to training on the Bill's new provisions, it is estimated that private landlords will require one day of training, community landlords will require 2.5 days for familiarisation purposes, and legal professionals will require one day in order to update their knowledge.<sup>318</sup>

### *Evidence from respondents*

468. There was some criticism of the Welsh Government's estimate of costs associated with the Bill. Many respondents felt the costs were an underestimate and failed to take into account the probable impact on the wide range of stakeholders likely to be affected, including contract-holders, landlords, local authorities, third sector advice providers, the legal profession, and the courts.<sup>319</sup>

469. The RLA asserted that the RIA "greatly underestimates the financial impacts because it underestimates the total cost to the private rented sector and the wide range of stakeholders".<sup>320</sup>

470. It suggested that court costs would be a likely additional expense as landlords get to grips with the new legislation. It estimated the additional

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<sup>317</sup> Explanatory Memorandum, page 66, Table 8

<sup>318</sup> Explanatory Memorandum, pages 66-73, paras 247, 258 and 278

<sup>319</sup> Written evidence, RH16, RH29, RH31, RH32, RH33

<sup>320</sup> Written evidence, RH29

cost of the Bill could be £45 million, including the cost of litigation test cases.<sup>321</sup>

471. CHC said the costs for housing associations would be “far in excess” of the estimate in the RIA.<sup>322</sup>

472. It also stated that, whilst supporting the provision of information and briefings to contract-holders, this “will not be a substitute for legal advice”, and it was therefore “cautious of the Welsh Government’s assertion that legal costs will be significantly less on this basis”.<sup>323</sup>

473. Citizens Advice Cymru said further additional funding will be required on top of the allocated £160,000 over four years, identified in the RIA, in order to help landlords and tenants make informed decisions about entering into occupation contracts.<sup>324</sup>

474. The WLGA believed the additional costs associated with longer periods in temporary accommodation for homeless households are not identified within the RIA.<sup>325</sup>

475. A number of private landlord representatives commented that costs are likely to be passed on to contract-holders.<sup>326</sup> In particular, the RLA suggested that meeting the obligation to ensure that dwellings are fit for human habitation would cost the private rented sector upwards of £0.5 billion, “much of which will fall on tenants”.<sup>327</sup>

476. The Law Society suggested that the claim made in the RIA that legal professionals would require one day of training to familiarise themselves with the new provisions “is unlikely to be sufficient”.<sup>328</sup> It drew comparisons with the two-day training that is being delivered to advisers in the housing field in relation to the recently enacted Housing (Wales) Act 2014.<sup>329</sup> It added:

“(…) it is our view that for any purposeful training to be delivered, we would be looking for possibly more than one day, in order for lawyers

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<sup>321</sup> Written evidence, RH29

<sup>322</sup> Written evidence, RH32

<sup>323</sup> *ibid.*

<sup>324</sup> Written evidence, RH33

<sup>325</sup> Written evidence, RH31

<sup>326</sup> Written evidence, RH24, RH29

<sup>327</sup> Written evidence, RH29

<sup>328</sup> RoP, para 10, 30 April 2015

<sup>329</sup> *ibid.*

to be brought up to speed with the new [law]. (...) I would imagine that two days would be sufficient.”<sup>330</sup>

477. The National Trust made similar points:

“We anticipate that we will need to familiarise all our legal team, our 9 Rural Surveyors (...) and, to a basic level our 11 general managers in Wales. We anticipate that this will take on average 3 days for each of our rural surveyors and lawyers to provide them with the level of knowledge they will require”.<sup>331</sup>

478. The National Trust suggested that a long lead in period to the full introduction of the new regime could significantly reduce the costs as landlords would be able to issue the new standard and secure contracts as and when existing tenancies expire.<sup>332</sup>

### ***Evidence from the Minister***

479. The Explanatory Memorandum accompanying the Bill states:

“The introduction of such a significant piece of legislation must be backed up by investment in action to oversee the preparation for change and its implementation, to raise awareness of the changes, and to evaluate the impact and benefits of the changes.”<sup>333</sup>

480. The Minister explained that Welsh Government officials have been in discussion with the Ministry of Justice, Her Majesty’s Courts and Tribunals Service, the Judicial College and with judges directly regarding the proposals set out in the Bill, which had led her to believe that the Bill will not result in an overall increase in court costs.

481. The Minister added:

“(...) over time, there is every reason to expect disputes to reduce as a consequence of greater clarity on rights and responsibilities. Similarly, the costs to landlords and contract-holders should also reduce over time, rather than increase.”<sup>334</sup>

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<sup>330</sup> RoP, paras 10-12, 30 April 2015

<sup>331</sup> Written evidence, RH16

<sup>332</sup> *ibid.*

<sup>333</sup> Explanatory Memorandum, paragraph 238, page 65

<sup>334</sup> Letter from the Minister for Communities and Tackling Poverty, 16 April 2015

482. We asked the Minister to respond to the Law Society's view that legal professionals would require two days of training in order to familiarise themselves with the new provisions of the Bill, not one day. The Minister said that the cost estimates for training had been set at one day as this was based on the Judicial College's estimate of training required for judges. She also said:

"I think the Bill [has] a very clear structure, so I still stand by the one day."<sup>335</sup>

483. We also asked the Minister for further information to aid our understanding of the underlying assumptions on which the calculations for the figures in the RIA are based.

484. In response, the Minister said:

"The calculation within the Regulatory Impact Assessment is based upon an estimate of 2,600 solicitors in Wales. However, additional research and discussions with the sector have shown that not all solicitors would be required or need to undertake this familiarisation; for example, many senior partners or those specialising in criminal or non-housing matters.

"Therefore, based on an estimate of 1,800 solicitors undertaking this training, which is on the generous side, and calculated on an average income of £48,632 per annum and an average of 253 working days per annum, the daily cost is £192.00. The rounded cost of £346,000 in the Explanatory Memorandum is derived by multiplying £192.00 by the number of solicitors, which equates to £346,000."<sup>336</sup>

### ***Our view***

485. We note the overall cost estimates provided by the Minister in the RIA and acknowledge that the Minister had discussions and sought out information from a number of sources before committing to these cost estimates.

486. We also note that, with regards to the cost estimates for training for legal professionals, the Minister based the figures on the Judicial College's estimate of training required for judges.

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<sup>335</sup> RoP, para 512, 20 May 2015

<sup>336</sup> Letter from the Minister for Communities and Tackling Poverty, 9 June 2015

487. We have not been convinced by the cost assessments and, having received evidence from a number of respondents on this matter, we believe that the costs of implementing the Bill's provisions are likely to be higher than the Minister's estimates.

488. We note that the Finance Committee has concerns about the financial estimates provided for in the RIA, and that it does not believe there is sufficient evidence to allow for proper financial scrutiny of the Bill.<sup>337</sup>

**We recommend that the Minister reviews the financial estimates for the Bill in light of the Finance Committee's concerns and the evidence we have received on this matter, and updates the Explanatory Memorandum following stage 2 proceedings to take account of this review.**

489. We support the proposal from Welsh Tenants for awareness raising amongst contract-holders but recognise that this will require financial assistance from the Welsh Government. (see chapter 2, general principles)

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<sup>337</sup> Letter from the Finance Committee, 28 May 2015